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NOMINATION OF CLARENCE M. KELLEY TO BE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

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HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

ON

NOMINATION OF CLARENCE M. KELLEY, OF MISSOURI, TO BE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

JUNE 19, 20, AND 25, 1973

Printed for the use of the Committee on the Judiciary



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WASHINGTON : 1973

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CONTENTS

TUESDAY, JUNE 19, 1973

Testimony in support of nominee by:	Page
Stuart Symington, U.S. Senator from Missouri-----	1
Thomas F. Eagleton, U.S. Senator from Missouri-----	2
William J. Randall, Representative from the fourth congressional district of Missouri-----	8
Elliot L. Richardson, Attorney General-----	12
Prepared statement by Congressman William J. Randall-----	10
Letters and articles in support of Clarence M. Kelley's nomination, submitted by Senator Thomas F. Eagleton:	
Illus W. Davis, President, Kansas City Board of Police Commissioners-----	3
William L. Culver, Executive Director, Missouri Law Enforcement Assistance Council-----	4
W. H. Bates, former Secretary-Attorney for the Board of Police Commissioners of Kansas City-----	4
Statement of the Kansas City Police Board, dated June 7, 1973-----	4
Editorial from Kansas City Times, dated June 8, 1973, "Fine Kelley Appointment for the Damaged FBI"-----	5
Editorial from Kansas City Call, dated June 8, 1973, "Chief Kelley Moves Up"-----	6
Article from the Washington Post by Harry Jones, Jr., dated June 9, 1973, "Mr. Nixon's FBI Nominee: A Profile"-----	6
Testimony of Clarence M. Kelley, nominee to be Director of the Federal Bureau of Investigation-----	15
Telegrams in support of Clarence M. Kelley, nominee to be Director of the Federal Bureau of Investigation, submitted by Senator James O. Eastland-----	17
Letter, dated June 20, 1973, from Senator Hugh Scott, with enclosure, to Senator James O. Eastland-----	18
Letter, dated June 20, 1973, from James L. Blair, moderator, Christian Church in Missouri, to Clarence M. Kelley-----	18
Final Report, Mayor's Commission on Civil Disorder, dated August 15, 1968, Kansas City, Missouri, submitted by Senator James O. Eastland-----	21
Letter, dated June 12, 1973, from David R. Hardy to Senator James O. Eastland-----	24
Statement by Robert H. Lawson, Executive Director of the California Council on Criminal Justice, dated January 30, 1973, submitted by Senator Roman L. Hruska-----	54
Letter, dated April 30, 1973, from Donald E. Santarelli, Administrator of LEAA, to Congressman B. F. Sisk, submitted by Senator Roman L. Hruska-----	55
S. 2546, with comments, submitted by Senator Roman L. Hruska-----	57
Prepared statement by Senator Robert Dole of Kansas, submitted by Senator Roman L. Hruska-----	65
Memorandum from the Community Relations Service of the Department of Justice, dated April 27, 1972, submitted by Senator Birch Bayh-----	68
Letter, dated July 20, 1973, subsequently submitted by Clarence M. Kelley, with enclosure, in regard to political activities of members of the FBI, to Senator John V. Tunney-----	84
Telegram from Michigan Association of Chiefs of Police, submitted by Senator Philip A. Hart-----	88
Newspaper article, "School Children Records to be filed in Federal Criminal Computer," from The Independent Journal published by the Church of Scientology-----	89

WEDNESDAY, JUNE 20, 1973

Testimony of Clarence M. Kelley, nominee to be Director of the Federal Bureau of Investigation.....	Page 91
Telegram from Clifford M. Spottsville, Municipal Judge, Kansas City, submitted by Senator James O. Eastland.....	92
Telegram from Everett P. O'Neal, O'Neal Tire Company, Kansas City, submitted by Senator James O. Eastland.....	92
Statement by Senator Hiram L. Fong, submitted by Senator Roman L. Hruska.....	114

MONDAY, JUNE 25, 1973

Letter and resolution from the Kansas City Chamber of Commerce, submitted by Senator Roman L. Hruska.....	127
Testimony of Mr. Bruce R. Watkins, Circuit Court Clerk, Jackson County Kansas City, Missouri.....	128
Editorial and articles from the Kansas City Call, submitted by Senator Birch Bayh.....	139
List of questions in regard to Terrence B. Norman and the Kansas City riots, submitted by Senator Birch Bayh and response by Chief Kelley.....	141
Testimony of Mr. J. Nelson Thompson, Attorney at Law, Kansas City, Missouri.....	146
Letter, dated July 3, 1968, from Chief Kelley to J. Nelson Thompson....	151
Letter of July 8, 1968, from J. Nelson Thompson to Chief Kelley.....	151
Letter dated July 12, 1968, from Chief Kelley to J. Nelson Thompson....	152
Testimony of Mr. Everett P. O'Neal, Kansas City, Missouri.....	157
Testimony of Mr. David R. Hardy, Practicing Attorney, Kansas City, Missouri.....	165
Prepared statement by Mr. David R. Hardy.....	167
Biographical sketch of Mr. David R. Hardy.....	168
Article "From the Minister's Desk . . ." from June 20, 1973, issue of The Country Club Christian, submitted by David R. Hardy.....	169
Telegram from Robert S. Boyd, former Executive Director, Mayor's Commission on Civil Disorder, submitted by Senator James O. Eastland....	171
Article by Michael D. Miller, Kansas City Star, dated August 19, 1968, "Negro Leaders Pleased by Report".....	172
Article by Charles Hammer, Kansas City Star, "A First for Police".....	174
Testimony of Dr. Charles B. Wilkinson, Executive Director, Greater Kansas City Mental Health Foundation and Assistant Dean, University of Missouri, Kansas City School of Medicine.....	175
Testimony of Ilus W. Davis, former Mayor of Kansas City.....	176
Questions by Senator Charles McC. Mathias, Jr., in writing, to Chief Clarence M. Kelley.....	181
Article from the May, 1973, Journal of the American Bar Association, submitted by Senator Charles McC. Mathias, Jr.....	185
Chief Clarence M. Kelley's answers, in writing, to Senator Charles McC. Mathias, Jr.....	189

NOMINATION OF CLARENCE M. KELLEY TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

TUESDAY, JUNE 19, 1973

U.S. SENATE.
COMMITTEE ON THE JUDICIARY.
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, McClellan, Hart, Kennedy, Bayh, Burdick, Byrd of West Virginia, Tunney, Hruska, Thurmond, Cook, Mathias, and Gurney.

Also present: Peter Stockett, Tom Hart, and Hite McLean, professional staff members.

The CHAIRMAN. The committee will come to order. This hearing is on the nomination of Clarence M. Kelley of Missouri to be Director of the Federal Bureau of Investigation.

By blue slip Senator Symington and Senator Eagleton approved the nomination.

Notice of today's hearing was printed in the Congressional Record on June 12, 1973.

Senator Symington?

STATEMENT OF HON. STUART SYMINGTON, A U.S. SENATOR FROM MISSOURI

Senator SYMINGTON. Thank you, Mr. Chairman. I appreciate the courtesy of being here first on this nomination because we have an important meeting of the Armed Services Committee and, therefore, after making a brief statement with respect to this worthy nomination, I ask your indulgence at letting me leave.

It is a pleasure indeed to appear with my distinguished colleague, Senator Eagleton, before you today to present Clarence M. Kelley, a Missourian who has been nominated by the President to become the Director of the Federal Bureau of Investigation.

Nearly 12 years ago Kansas City, Mo., was looking for a police chief who would reestablish public confidence in the Department. Also we were looking for someone to raise morale among its members. And it was fortunate for the city that they turned to a man who had broad experience, strong leadership, professional ability, and administrative skill which turned the Kansas City Police Department into one of the most outstanding departments in the Nation today.

At a time when the Nation's No. 1 law enforcement agency is clearly in need of strong, new leadership, it would appear most appropriate

for the President to turn to this same man to chart its course in the years to come.

After an outstanding career of 21 years in the Federal Bureau of Investigation, Chief Kelley brought to Kansas City a professional approach, which has earned national accolades for both him and his department.

In 1966, Chief Kelley formed a metro squad designed to bring Kansas City police equipment and technology into the investigation of major crimes in the six county, two State metropolitan area. And the organization and functioning of this metro squad, both have served as a model for similar agencies throughout the United States and Canada.

Two years later, Chief Kelley computerized the police department so that offices could receive almost instantly information in the field and thereby respond more quickly to police calls.

As the committee begins to consider the record of this official, I would present the comments of an outstanding mayor who had the opportunity to observe Chief Kelley's Kansas City career firsthand.

Its mayor of that city, Kansas City, for 8 years, Ilus W. Davis, served ex officio on the board of police commissioners and he is now president of that board. In a recent letter that he wrote me, he stated that Chief Kelley and I quote :

Has an outstanding record of law enforcement in Kansas City and, in my opinion—he continued—has transformed the Kansas City Police Department from an ordinary police department into one of the most progressive and effective police departments in this country. He is his own man and makes his own decisions after listening carefully to the facts and the views of others and stands by those decisions and takes the responsibility for them.

Mr. Chairman, it is a privilege to join in this endorsement of Clarence M. Kelley by a great mayor—and my longtime friend, as well as comparable endorsements from many other prominent Missourians.

It is their opinion, and it is most certainly my opinion that Chief Kelley has those qualities needed to meet the challenge of a most difficult and demanding job, Director of the Federal Bureau of Investigation.

I thank you and the committee for listening to my statement.

The CHAIRMAN. Any questions?

[No response.]

Senator Eagleton?

STATEMENT OF HON. THOMAS F. EAGLETON, A U.S. SENATOR FROM MISSOURI

Senator EAGLETON. Mr. Chairman, and members of the committee, I too, am pleased to be here to present to this committee and to support the nomination of Clarence M. Kelley, as Director of the Federal Bureau of Investigation.

We are all aware that the reputation of the FBI has suffered greatly in recent months. The best way to begin to rebuild that reputation is by being certain that the new Director is an individual of unquestioned integrity with vast competence and experience in the field of law enforcement.

Clarence Kelley has those credentials, earned by both his distinguished service in the FBI and as chief of police of Kansas City, Mo.

I strongly recommend Mr. Kelley to this committee.

Mr. Chairman, I ask unanimous consent that the following items be placed in the hearing record, in support of Mr. Kelley's nomination:

(1) A letter to me from Ilus W. Davis, previously referred to by Senator Symington—the former mayor of Kansas City and who is currently the president of the Kansas City Board of Police Commissioners.

(2) A letter from William L. Culver, executive director, Missouri Law Enforcement Assistance Council.

(3) Mr. W. H. Bates, former secretary-attorney for the Board of Police Commissioners of Kansas City.

(4) A statement of the Kansas City Police Board, dated June 7, 1973.

(5) Two editorials: one from the Kansas City Times and one from the Kansas City Call, both dated June 8, 1973.

(6) An article from the Washington Post by Harry Jones, Jr., an investigative reporter from the Kansas City Star, June 9, 1973.

The CHAIRMAN. Those will be admitted.

[The above-referred to documents follow:]

BOARD OF POLICE COMMISSIONERS,
Kansas City, Mo., June 7, 1973.

HON. THOMAS F. EAGLETON.
*New Senate Office Building,
Washington, D.C.*

DEAR SENATOR EAGLETON: I am pleased to receive the report of the nomination of Clarence Kelley as Director of the FBI.

I have known Clarence Kelley since 1935 when we lived in the same fraternity house at the University of Kansas. He has devoted his life to law enforcement, and I am enclosing a copy of biographical data concerning him. He has an outstanding record of law enforcement in Kansas City and, in my opinion, has transformed the Kansas City Police Department from an ordinary police department to one of the most progressive and effective police departments in this country. I am enclosing a statement which sets out a few of the accomplishments which are significant.

Clarence Kelley came to Kansas City in 1962 as Chief of Police, and I became Mayor in 1963. As you know, under the Missouri system, our Police Department is governed by a board of five commissioners, four of whom are appointed by the Governor and the fifth is the Mayor of Kansas City who is an ex-officio member of the board. Chief Kelley has served under two Democratic governors and one Republican governor and under three mayors of the City of Kansas City. He has very carefully kept himself out of the political arena and has been as nearly impervious to political pressure as a man could be. I have known him closely for a number of years and I am still not sure what his private political leanings are. He even stayed out of our non-partisan city elections even though we have known each other for many years, and I admire him for handling himself the way he has. Clarence is not a man who is pushed around by anyone. He is his own man and makes his own decisions after listening carefully to the facts and the views of others and stands by those decisions and takes responsibility for them.

In my opinion, as the Director of the FBI, he is not apt to be influenced or pushed around by anyone. As I mentioned in the statement the Board made on the announcement of his appointment, he would bring to that office many fine qualities. I believe he is the best qualified man in the country for that job and I give him my wholehearted support in accepting it.

If I can furnish you any other information or details of his service in this area, do not hesitate to call me.

Sincerely,

ILUS W. DAVIS.

MISSOURI LAW ENFORCEMENT ASSISTANCE COUNCIL,
Jefferson City, Mo., June 11, 1973.

HON. THOMAS F. EAGLETON,
*U.S. Senate, Senate Office Building,
 Washington, D.C.*

DEAR TOM: While I believe Chief Clarence M. Kelley is well known to you, I nevertheless must send you my strong endorsement of his selection as Director, Federal Bureau of Investigation. I strongly urge your support in his confirmation.

Clarence has been a member of our LEAA board here in Missouri since its inception and in fact was on the committee that selected applicants and ended up in hiring me in 1969. I have never met a more competent police official; here is a man who maintains his sense of balance as well as his sense of humor and has a broad understanding of justice system needs and problems beyond the strictly police area. His record in Kansas City is impeccable. I do not believe a better choice for this sensitive and demanding body could be made.

As always, kindest regards.

Sincerely,

WILLIAM L. CULVER,
Executive Director.

LATHROP, KOONTZ, RIGHTER, CLAGETT, PARKER & NORQUIST,
Kansas City, Mo., June 7, 1973.

HON. THOMAS F. EAGLETON,
*U.S. Senate, Senate Office Building,
 Washington, D.C.*

DEAR SENATOR EAGLETON: The news media reports are so strong that I am assuming their probable accuracy with relation to the nomination of Chief Clarence M. Kelley of the Kansas City, Missouri Police Department for directorship of the Federal Bureau of Investigation. During a period from late 1961 through the early part of 1966 I worked very closely with Chief Kelley in my capacity as Secretary-Attorney for the Board of Police Commissioners of Kansas City, Missouri. I have also worked with him on various projects of civic and community general interests since that time.

I thought it might be important for me to express to you my unequivocal and whole-hearted recommendation of this very outstanding individual from a capability, conscientious, reliability, and fair-mindedness standpoint.

I doubt that President Nixon will call on you to request your prior approval of his nomination, but I am sure that staunch support from his home state will be of some considerable consequence and I heartily urge you to indicate such at the appropriate time.

I am assuming that details with relation to educational background, experience, and general recommendations from law enforcement officials will be made available in a fashion which is customarily prepared on this type of occasion so I will not repeat it here. If you do not have such material available please advise me promptly and I will see that it is furnished immediately.

Best regards,

W. H. BATES.

BOARD OF POLICE COMMISSIONERS,
Kansas City, Mo., June 7, 1973.

The Board of Police Commissioners of Kansas City, Missouri has just learned of the announcement by President Nixon of the nomination of Chief Clarence Kelley as director of the Federal Bureau of Investigation. The board recognizes the many talents that Clarence Kelley has in the area of law enforcement and commends the President on his selection. Having served the police department of this city with great distinction for over eleven years, we know of the leadership, professional knowledge, administrative ability, and, above all, the personal integrity that he would bring to his new position. We take pride in the fact that the President has found in our city the type of man he needed to direct the FBI, and we support the chief in his acceptance of the appointment. We recognize, however, that his departure will place a great burden on the board to find a new chief to lead the department.

Upon his departure, the board will appoint lieutenant colonel James R. Newman to be acting chief of police. The board will, upon the confirmation of the appointment, announce a process for the selection of a new chief of police.

ILUS W. DAVIS,
President, Board of Police Commissioners.

[Editorial from Kansas City Times, June 8, 1973]

FINE KELLEY APPOINTMENT FOR THE DAMAGED FBI

Chief C. M. Kelley of the Kansas City Police Department can do much to restore an atmosphere in which the Federal Bureau of Investigation can once again operate with full public confidence. Kelley is a professional of the highest qualifications and a man of great integrity. He is scrupulously honest and has demanded the same honesty from the men and women of his department. He is a very human individual, capable of compassion and understanding.

The FBI is one of the most important and sensitive agencies in American government. These days it is sorely beset and morale is uncertain. This unhappy state has arrived through an unfortunate series of circumstances that do not reflect on the agents or administrators. But the fact remains that new leadership to inspire the loyalty and respect of FBI personnel is urgently needed—as are the general qualities that can wipe out any accumulation of public doubt. Clarence Kelley can offer that leadership and he has those qualities.

The death of J. Edgar Hoover last year brought about the crisis in the system that was inevitable. When Hoover became the director of the agency it was an inefficient and relatively unknown bureau. Hoover and events created the FBI as it developed through the decades of the 20th-Century criminality and war and the response of a democratic government. If Hoover's rule was benevolent and highly motivated, it nevertheless was autocratic. Only Hoover's death removed him from a system that didn't even exist when he began to mold the FBI.

The vacuum left by his departure was filled by an erupting crisis in the executive branch in which the acting director, L. Patrick Gray, seemed to be involved. As an active campaign worker for the Republican President, Gray was not a good choice regardless of his other qualifications. The use of FBI material in the 1972 campaign and the subsequent removal and destruction of papers were not developments to engender public confidence.

So now Chief Kelley has been asked by the President to head the agency and Kelley has consented, subject to the approval of the Senate. As a former FBI agent and as one of the most successful police administrators in the country, he meets the obvious requirements. But it is as an individual that Kelley can give the FBI what it so badly needs. His accomplishments in Kansas City illustrate his personality and character.

He has not been afraid to try something new. The helicopter patrols, the extensive use of computers and his extensive changes in training demonstrate that. He gets along with other government officials and law enforcement leaders. His leadership in this region without excitement of jealousy or resentment is the evidence. He has not dabbled in politics in any way; Republicans and Democrats do not think of him in political terms.

Beyond that, even considering the peculiar nature of the Kansas City police authority, which is founded in the state but must operate in the city, he has not meddled in Jefferson City or at City Hall. He is ready to defend the men and women who work for him for what he calls "errors of the head"—mistakes that come from bad judgment in an emergency or under emotional stress. For that quality he has been criticized from time to time by those who say he is insensitive to minority problems and frustrations.

It is difficult to understand how a competent professional in law enforcement could operate without a strong sense of loyalty to those who are with him. Of course minority-police differences are not to be played down. They are of essential importance and deserve critical attention. But this is a classic American dilemma which hardly is peculiar to Kansas City. Privately, Kelley has dealt swiftly with cases of brutality.

The record shows that in 1962 Kansas City had 7 black policemen out of more than 800. Now there are 100 Negroes in law enforcement out of 1,305—not counting civilian personnel. These include 3 captains, 9 sergeants, 16 detec-

tives, 60 patrolmen, 11 probationary patrolmen and an administrative supervisor. Several are women.

Kelley's departure will be a blow to the Kansas City department and to this metropolitan area. He hardly can be faulted for a desire to cap his career as the top law enforcement professional in the land. We have no doubt that he can undertake this challenge successfully. It will not be enough, however, for the administration to present a new face to the nation and subject the FBI to further political strain. Clarence Kelley must be assured of the nonpolitical independence that has marked his success here. Knowing Kelley, we assume that would be a primary condition under which he agreed to take on the task.

[Editorial from Kansas City Call, June 8, 1973]

CHIEF KELLEY MOVES UP

Although the black community has had its problems and its frustrating experiences with Chief Clarence Kelley, we must offer him our congratulations on being selected as the new director of the Federal Bureau of Investigation.

During the 12 years that he has been here, Chief Kelley has gained the reputation of being a good administrator and a capable law enforcement official. Those qualities plus his 20 years' experience in the FBI before becoming chief of police here made him the No. 1 applicant when a permanent successor to the late J. Edgar Hoover was sought.

Black citizens do not feel that Chief Kelley has been as sensitive to the needs and the aspirations of minority groups as he should have been and when charges of unfairness and brutality have been made, it appeared that he took the side of the police officer "right or wrong." The scarcity of black faces in the top echelon of the Police department also is an irritant in the black community. Chief Kelley and the Board of Police Commissioners have tried to encourage more black youths to join the force by conducting an intensive recruitment campaign among blacks but it has not been too successful—perhaps because of a feeling that the Police department is not really fair and won't give the black man a square shake.

Nevertheless, we wish Chief Kelley well as he moves on to a top national position of grave responsibility. We hope that the encounters he has had with the black citizenry of Kansas City have made him aware of the fact that as FBI chief, he is representing and serving all the people of the nation. We feel that he has learned some lessons here in dealing with minority groups which should help him become an FBI director of whom we all can be proud.

Regardless of the black citizens' feelings toward Chief Kelley, it is a boost to Kansas City to have its chief of police chosen for so high a position. It is good to have the federal government reach out into the Mid-lands, for a change, to secure a man to fill a top national post.

[From the Washington Post, June 9, 1973]

MR. NIXON'S FBI NOMINEE: A PROFILE

(By Harry Jones Jr.)

The writer is an investigative reporter for the Kansas City Star.

KANSAS CITY, Mo.—If Clarence M. Kelley, President Nixon's choice for FBI director, receives any flak before the Senate Judiciary Committee, it probably will be over his Kansas City police department's record in race relations in the 12 years Kelley has been its chief of police.

In other respects, the 61-year-old ex-FBI agent has been virtually free of criticism. He is generally regarded by most Kansas Citians as incorruptible, resistant to political pressures, innovative, warm but strong in personal relationships, possessing a good sense of humor, self-disciplined and as lacking in vanity as any public official around. He is a man's man, a cop's cop.

His resignation has been demanded by persons of influence only once—immediately after the rioting in April, 1968, following the assassination of Dr. Martin Luther King Jr. Several black community leaders called for his resignation

while passions were still high, for six blacks had been killed. They did not persist in the demand long, however, and the great bulk of whites in the city applauded what they regarded as the firmness his department had employed.

A five-member commission appointed by Kansas City's former Mayor, Ius W. Davis, a liberal Democrat, to investigate the causes and nature of the disorder, gave Kelley a clean bill of health personally while mildly scolding the police for some of the incidents. Kelley himself acknowledged that mistakes had been made but generally praised the police force for their performance. Only a few of the policemen had stood out as inexcusably inept or over-reactive.

Thursday, as various Kansas Citians of both races were interviewed about Kelley's nomination, black leaders were generally cool or hostile in their remarks, while whites were almost universally laudatory or, in the case of some of the stronger liberals, silent.

Kelley's basic problem in race relations has been that while he has tried to be responsive to the many legitimate black complaints, he has been fearful of displaying what he feels might be interpreted as weakness by his predominantly white police force. Their morale has been extremely important to him.

Kansas City's population is about 20 percent black. Its police force consists of only 99 blacks out of a total of 1,300. Three blacks are captains, nine are sergeants. As low a ratio as this is, it is considerably better than it was when Kelley became chief and he has tried strenuously to recruit blacks.

Kelley has acknowledged an awareness of the dangers of having rednecks in the police ranks and over the years has quietly tried to weed them out and reassign them to non-sensitive duties. But Kansas City's police force is recruited mainly from high school graduates in the city and nearby rural areas. Eliminating or isolating all the racially-prejudiced police in town is as difficult as solving a Mafia murder.

The square-jawed, ruggedly handsome Kelley is a native Kansas Citian whose boyhood in Kansas City's East side, as he has recalled it, was normal, middle-class and a little dull. He finished in the upper third of high school class and hit .300 as an outfielder in an advanced amateur league until his inability to hit curve balls persuaded him to drop baseball. He was graduated from the University of Kansas in 1936 and what was then the University of Kansas City Law School in 1940. He joined the FBI a few months after graduation.

He was appointed chief of police in Kansas City in 1961 at a time when the police department there was trying to recover from a series of demoralizing near-scandals in which five high-ranking officers had been indicted by a county grand jury. One under indictment was the former chief. None of the indictments resulted in convictions, but Kelley's first chore was to restore public confidence in the police department and the police officers' sense of self-esteem.

Confronted with several high-ranking old-liners who would have preferred a chief up from the ranks (for varying reasons), he slowly reorganized the department in such a way that the undesirables found themselves with less and less authority while those he thought he could trust were gaining more and more responsibilities.

Except for the discovery of a five-man police burglary ring in 1963, the department has remained scandal-free the 12 years Kelley has been chief. Meanwhile, he has managed to show a flair for innovation in police science and technology.

"It borders on heresy to say that maybe police have never really been adequately attuned to the times or suitably administered," he told the fourth annual seminar of the Law Enforcement Assistance Administration in Washington in May of last year. "I firmly believe that people in police fields have not recognized adequately that change is occurring around them at an unprecedented rate."

This was no idle remark. He has demonstrated in a variety of ways that the police must adapt to new technology. He instituted the first day-and-night helicopter patrol for any major city in the country in 1968. The same year he computerized the department so that policemen could receive almost instant information in the field and would respond more quickly on police calls. He established a metro squad that brought Kansas City police equipment and technology into investigations of major crimes anywhere in the six-county, two-state metropolitan area.

He hammered away at improving police-community relations first with storefronts in tension areas, then, when those didn't work, stationing community relations officers in all the police stations to respond when needed.

He has displayed sternness with wrongdoers on the department but has fallen under criticism periodically by defending too staunchly, in the opinion of critics,

those officers whose mistakes were, to his thinking, of the mind rather than the heart. He told a police recruit class in 1969:

"I want to warn you that we will have two ways of looking at any problem you may get into as officers. One type of problem is one which involves anything such as acceptance of a bribe or other matters of great moral turpitude. This is a matter of the heart, something you do knowingly. I can not abide a thief. I can not abide a liar. These are the errors of the heart, which go to the center of a man's character. Such errors will be severely judged.

"There are also errors of the mind, mistakes of judgment. For those you will be criticized. If such errors accumulate, you will run into serious trouble. Such errors are in a different category, however . . ."

Ideologically, Kelley is more conservative than he is liberal, but his sensitivity to problems of minorities and the blacks especially has noticeably improved over the years. Politically he could declare himself Democratic or Republican and few Kansas Citizens would be surprised whichever he picked.

"I don't believe in such activities as police roundups or vigilantes," he said in an interview in 1963. "I do subscribe to the theory that society has to place some restrictions on the police. The police, after all, constantly are depriving people of liberty. But, the pendulum can swing too far the other way. There is no question that police activity can be hampered by a too-severe interpretation of constitutional rights. Sometimes this has made the job difficult."

How will he compare with J. Edgar Hoover, a man he often had spoken admiringly of and for whom he worked for 21 years? If his style in Kansas City does not change, he will probably be less aloof, less the martinet without losing the respect of his men, just as eager to maintain professionalism in the ranks and far better liked by outsiders.

Senator EAGLETON. That concludes my presentation.

The CHAIRMAN. Any questions?

Senator KENNEDY. I would like to extend a welcome to Senator Eagleton and Senator Symington and tell them how much we appreciate those warm words of endorsement. They are very helpful to listen to, coming from the Senators from the State who have worked with this nominee. I want to thank you very much.

Senator EAGLETON. Thank you.

I ask, too, to be excused to attend another hearing.

The CHAIRMAN. Yes, sir.

Congressman Randall?

STATEMENT OF HON. WILLIAM J. RANDALL, A REPRESENTATIVE IN CONGRESS FROM THE FOURTH CONGRESSIONAL DISTRICT OF MISSOURI

Mr. RANDALL. Mr. Chairman, I appreciate the opportunity to testify.

At the outset, I wish to make it known that I was not asked to testify by anyone; in fact, I suspect this is the first time the chief knew I was going to appear today.

My reason for being here is the fact that it has been my privilege to represent for the past 14 years—and we are starting on our 15th year—what could be called the east suburbs. At one time, we represented about a third of Kansas City. Due to redistricting, it is now down to a smaller portion. But during all of those terms, we have had a substantial portion of the sixth county metropolitan area referred to by our senior Senator and our junior Senator.

I speak this morning then, not from hearsay, but on behalf of someone that I know has done quite a lot for the area which I am privileged to represent. I know of his work in the metro squad. Since the creation of that squad, which has personnel contributed to by all of the area, by Kansas City, Kans., across the river to the north, and the

whole area, but the true leader of that effort has been Chief Kelley and most of the personnel are contributed by the Kansas City Police Department.

In the last analysis, he is accountable for its success or failure.

I wanted to be completely accurate so last night I called our chief of police, our acting chief of police, Bob Rinehart, and I said, how is the metro squad working and he said, as efficiently as ever. I know from my own personal experience that they furnish specialists in forensic medicine, laboratory technicians, and so on. Whenever there has been a serious crime, the Kansas City Department or Chief has always been willing to lend a helping hand. And when there is a serious crime committed, it is very comforting to know the metro squad is going to get to work on it, even though it may not be right in Kansas City.

The chief has very unselfishly loaned and made available to our community, which has grown from a little town of 9,000 to now 130,000, and that is Independence, Mo., its helicopter squad, when there have been times we needed it.

In the limited remarks I have, I would like to mention an instance which occurred a little over a year ago, involving a county seat town in our congressional district, Harrisonville. There was a drug-crazed addict who had come into Harrisonville one Friday night and before he got through he killed four persons and seriously wounded three others. Well, it was discovered there was quite a group living in a commune and the local police forces tried to eliminate them, tried to get them to move out of town, and they were successful but the word got about that the group—and we had no intelligence but this came through some college students over at a nearby town—that they were going to come back on Memorial Day and try to burn the town down; try to sack it. And that was our last contact with the chief. We notified the local enforcement and they called in the State patrol. The chief made his helicopters available and they actually did come to the city limits on that Memorial Day intending to sack the town.

So I pay special tribute and I know all of the people in our area do for the chief's efforts.

I can say to you that this is a man who believes in law and order and good law enforcement and not just law and order, as a matter of rhetoric either.

He has shown his willingness to help neighboring community unselfishly.

Mr. Chairman, I say to you—as did one of the preceding witnesses—this is a time for firm professional leadership. The chief has the technical competence and, I might say, unshakable political independence. And I cite to you one editorial referred to by our junior Senator, which he asked to put into the record, and the content of that editorial was that there is not one person in Kansas City who even knows the politics of Chief Kelley unless someone had access to the voting booth.

I think one of his best credentials is he was elected to the head of security for both conventions, both Republican and Democratic National Conventions.

I suppose the only complaint that may come concerning the chief's confirmation may be from some of the items in connection with the 1968 trouble, but I cite to you again and I ask you to carefully peruse the editorial, which was referred to, of the Kansas City Call. I will

take a second to read that. This is the paper owned and published by blacks, and their concluding comment was this:

During the 12 years that he has been here, Chief Kelley has gained the reputation of being a good administrator and capable law enforcement official. These qualities plus the 26-years experience in the FBI, before becoming Chief of Police here, made him the Number 1 applicant when a permanent successor to the late J. Edgar Hoover was sought.

And they continue:

Nevertheless, we wish Chief Kelley well as he moves on to a top national position of great responsibility.

Mr. Chairman, I am going to conclude my remarks by saying that I know this committee will carefully consider the facts. In my judgment, it would be in the national interest for Chief Kelley to be confirmed as quickly as possible so that he can get on with the job of reestablishing the FBI as a nonpolitical investigative agency in the tradition of Mr. Hoover.

I can say from personal knowledge, and not hearsay, that Chief Kelley has every capability to fulfill this position.

The CHAIRMAN. Thank you, sir.

Any questions?

Senator KENNEDY. Just, welcome.

Mr. RANDALL. Thank you very much. May I be excused?

The CHAIRMAN. Yes.

[The statement of Congressman William J. Randall in full follows:]

REMARKS BY REPRESENTATIVE WILLIAM J. RANDALL BEFORE THE SENATE JUDICIARY COMMITTEE IN SUPPORT OF THE CONFIRMATION OF CHIEF CLARENCE M. KELLEY AS DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. Chairman, I appreciate the privilege to be permitted to testify in behalf of the confirmation of Chief Clarence M. Kelley as nominee to be the Director of the FBI.

At the outset I wish it to be known that I was not asked to testify either by Mr. Kelley or anyone in his behalf. I doubt that the nominee himself knew I would appear until this morning.

My reason to ask to appear is that I am now in my 15th year as a Member of the House representing the 4th Missouri Congressional District. From about 1959 until 1966, our district included about one-third of Kansas City within its boundaries. It was not until January 1 of this year that all except a few precincts of Kansas City were redistricted out of and over into the Missouri 5th District.

But, Mr. Chairman, for seven two-year terms, or for 14 years, I have represented in the House the East suburbs and also from 8 to 16 counties in West Central Missouri. During all of these years, at least 4 of these counties could be said to be in the metropolitan area. They serve as a bedroom area for commuters employed in Kansas City, Missouri.

I appear this morning not to speak for Chief Kelley from hearsay, but from knowledge about what he has done for the area which I am honored to represent in the Congress. I refer to his great work with what is called the Metro-Squad. Since the creation of that unit which is composed of officers from the Kansas City Police Force, the police force of Kansas City, Kansas across the state line, the Independence Police Force—my home city—and the sheriff departments of the six surrounding metropolitan counties. I know for a fact that Chief Kelley has been the real leader of this Metro-Squad. He proposed and fostered its creation. His Kansas City Police Department has more members on the Squad than all the other surrounding municipalities combined. He is, in the last analysis, the accountable officer for the success or failure of the Metro-Squad.

In order that I might be completely accurate, last night I called our Acting Chief of Police in Independence, Missouri, Mr. Bob Rinehart; and I asked him

if the Metro-Squad was still functioning as efficiently as ever. His reply to me was that when some of the smaller communities run into what at first seems an insoluble crime, they have no recourse but to call on the Metro-Squad. He verified what I had always believed to be the facts and that is that all of the specialists such as those in forensic medicine, laboratory technicians, and other experts are provided under the direction of Chief Kelley as a good neighbor service to the Law Enforcement Agencies of the communities surrounding Kansas City.

I will not say that the Metro-Squad has solved *every* crime in the Greater Kansas City area, but I can report to you that when those of us in West Central Missouri read about the commission of a very serious crime, we all feel reassured and confident that there will be a solution to the crime if the Metro-Squad is working on it—that is, if a solution is humanly possible.

On several occasions, Chief Kelley has cheerfully loaned units of his Helicopter Patrol to my home city of Independence, Missouri during times of intensive need.

In the limited time which I may have remaining, I would like to mention an instance which occurred a little over a year ago involving a county seat town in our Congressional District, about 35 miles south of Kansas City. A drug-crazed addict had come into Harrisonville, Missouri late one Friday afternoon. Before he had destroyed himself, he had killed four persons and seriously wounded three others. After this crime, the local police commenced to prosecute a group of drug users living a commune-like existence at the northeast edge of the city. After several weeks businessmen and other volunteer citizen groups, working with local authorities, succeeded in forcing these undesirables out of the city.

Later on, in reprisal, these people enlisted sympathizers from surrounding areas to plan to come back into the city, by surprise, on Memorial Day, at a time when law enforcement forces would be off duty to burn or otherwise destroy the town. Our office received a tip from some students at one of our nearby colleges that the raid was being planned. I immediately conferred with the civic leaders of Harrisonville. They canceled the leave of their own police to man the entrances into the city.

Because I recognized the potential for violence and perhaps further loss of life, I took it on myself to visit Chief Kelley. I immediately received an assurance from him that in the event of need he would dispatch as many men as needed from his force to help Harrisonville if the level of violence should become greater than could be handled by the local police, with help from their Sheriff, and the State Patrol.

That, Mr. Chairman, and Members of the Committee, is the kind of a man Chief Kelley is. He believes in law and order and good law enforcement not just as a matter of rhetoric, but with a ready willingness to help his neighboring communities in an unselfish, cooperative way, beyond his own required jurisdiction, if and when his fellow lawmen in the surrounding areas are in need.

Mr. Chairman, a Director of the FBI must have firm, professional leadership. Such leadership must include both high technical competence in law enforcement, and an unshakable political independence. I submit that Clarence M. Kelley is trained in the law. He has extensive experience in enforcing the law, including almost 21 years with the FBI and 12 years as Police Chief of Kansas City.

It happens that my Field Assistant in the home office in our Congressional District is a retired Major from the Kansas City Police Department. He carries that gold badge in his pocket, even though he is in retirement. He served under Chief Kelley as an officer in charge of a quadrant of the city. Later he was head of the Vice Squad. I have discussed this nomination with my Field Assistant. I asked him to describe the actions and attitudes of Mr. Kelley during the years he served under him. The words he used to describe the Chief were as follows: He is efficient. He was a tough administrator. He was steady and unemotional, but always a fair man.

It has been suggested that about the only complaint that can be made against Chief Kelley would be a question concerning the handling of the 1968 race riots and the subsequent charges of unfairness by the Black Panthers.

In that context, I would like to cite, for the benefit of the Committee, references from an editorial published in "The Kansas City Call" which is the only newspaper owned and published by blacks in the Kansas City area. In these editorials, the paper stated quite candidly that it deplored the scarcity of black faces in the top echelons of the Police Department, but that same paper also pointed out that Chief Kelley and the Police Commissioners have tried earnestly to encourage more young blacks to join the Police Force, but without success. The editorial went on to suggest that black citizens were irritated because the Chief

may not have been as sensitive to the needs and aspirations of minority groups as they would have preferred, but in conclusion, listen to what the editorial had to say: "During the 12 years he has been here, Chief Kelley has gained the reputation of being a good administrator and a capable law enforcement official. We wish Chief Kelley well as he moves on to a new position of grave responsibility."

Mr. Chairman, the head of the FBI should not only be able to resist political pressures, he should not be political at all. I can report to you as one who has represented a portion of Kansas City that just about no one in our area knows whether Chief Kelley is a Republican or a Democrat. I can assure you that he has maintained a non-partisan posture. The best evidence there is that he is bi-partisan, if not non-partisan, is the fact that he was named to head the Security Advisory Boards for both the Democratic and Republican National Conventions in Miami last summer.

Awhile ago I said that one of the outstanding attributes of Chief Kelley was his characteristic of efficiency—which means efficiency and effectiveness in law enforcement. The best testimony to his success in Kansas City is the fact that he has been the head of a Police Department that has helped produce a 25% drop in the crime rate in Kansas City in the last four years. In his first news conference following the nomination, he said some things that are so encouraging that I think they should be repeated now. He said then, "I am convinced that crime can be curbed without sacrificing human rights and dignity."

It may have been mentioned before but, at the risk of repetition, I think it is important to remind the Committee that in 1970 Chief Kelley received the J. Edgar Hoover Gold Medal Award as outstanding Police Chief in the nation. This award is named for the man who gained national respect for his defense of personal liberty, J. Edgar Hoover.

As I close, let me conclude by saying that while I know this Committee will carefully consider the facts, in my judgment it would be in the national interest for Chief Kelley to be confirmed as quickly as possible in order that he can get on with the job of restoring the integrity of the FBI as a non-political investigative agency in the tradition of Mr. Hoover. Chief Kelley has that capability.

The CHAIRMAN. Mr. Attorney General?

STATEMENT OF ELLIOT LEE RICHARDSON, ATTORNEY GENERAL

Mr. RICHARDSON. Thank you, Mr. Chairman.

The CHAIRMAN. I want to ask you a question.

Mr. RICHARDSON. Mr. Chairman, I hope to be able to answer it.

The CHAIRMAN. Why did you recommend Chief Kelley?

Mr. RICHARDSON. I am glad to be able to address myself to that, Mr. Chairman, and members of the committee.

The qualities which the President and before me, Attorney General Kleindienst, and, after I became Attorney General, my staff and I sought in a Director of the FBI, are the qualities you have here described today in Chief Kelley, that is, high character, and personal integrity, professional experience in law enforcement, coupled with the respect of the law enforcement community, leadership capacity, including the capacity to establish and maintain high standards of efficiency, discipline and morale.

These were the qualities that we sought.

The President had initiated a nationwide search, which covered present and former members of the FBI, police chiefs, judges, prosecuting attorneys, government administrators, at all levels of government.

This search had already reviewed the names and qualifications of scores of potential candidates by the time I came on the scene and, at that point, working with the White House staff we narrowed the field down. Chief Kelley was clearly in our judgment, the outstanding can-

didate among a very outstanding field of finalists and the President's selection was made on the basis of this conclusion.

You have already heard from the Senators from his State and from a Congressman from his district. Their endorsement of his qualities—and I was very pleased, personally, to hear them speak in these terms—because they attested to the qualities and the experience on the part of Chief Kelley, which have been uniformly expressed by all those people we have asked about him.

This has been a very wide range of people because he has had broad experience and broad contacts and his experience within the Federal Bureau of Investigation itself, his 21 years of experience culminating as special agent in charge of Memphis have won him tremendous respect among the Bureau's professionals.

You heard something about what he has accomplished as chief of police of Kansas City today. He took over a faction ridden department with low morale, charges of corruption, and so on, and in very short time, turned it around.

But as one member of the board of police foundation said to me, that would not have been surprising in a man of Chief Kelley's background and character. What is most impressive to me is he did not stop with the restoration of discipline and morale; the achievement of sheer law enforcement competence by existing standards. No, he went beyond that to seek to make his police department the most forward looking and innovative, the most receptive to new ideas, in this country.

This, coupled with the other qualities that he had demonstrated, seemed to us to make him a truly outstanding candidate for the sensitive responsibilities of chief of the Nation's most important investigative agency.

I am confident that in undertaking that job, he will demonstrate the same capabilities that he has demonstrated as chief of police.

I might conclude, Mr. Chairman, by saying that the most critical problem the chief faced was the problem that arose as a result of the severe civil disturbance that occurred in Kansas City during the week of April 8, 1968. This was a situation that led to the establishment of a mayor's commission on civil disorder to investigate all of the aspects of that situation including the question of how it had been handled by the police department, itself.

The CHAIRMAN. Now, who was on that Commission?

Mr. RICHARDSON. It was an outstanding citizens group, Mr. Chairman. The chairman of it was an attorney named David R. Hardy. It included, as another member, a businessman named Robert B. Ingram; another outstanding attorney, Mr. Arthur Mag; Malcolm Smith, and an outstanding Negro psychiatrist, Dr. Charles Wilkinson.

I would conclude, Mr. Chairman, by reading a brief passage from that report, because I think it summarizes very well the kinds of qualities that have been attested to here already:

Although there was some differing opinions expressed by witnesses before the Commission, the factual evidence and the overwhelming weight of the opinion evidence from those in a position best to know and evaluate the facts, established beyond question that Chief Kelley is a capable and competent Chief of Police. He is honest and fair, has real integrity and is highly respected generally by the policemen under his command, including the Negro policemen. He is well

qualified for his job. He is a good administrator and utilizes modern and advanced techniques and equipment. Under his leadership, the Department has steadily improved in quality in most respects. He has the capacity to adapt to changing times and demands, and he is now demonstrating this. He is receptive to ideas and suggestions for improvement.

Mr. Chairman, that report was written in August, August 15, 1968, almost 5 years ago. During those intervening years, Chief Kelley has continued to demonstrate the capacity to adapt and to lead and he has, during that period, put into effect, so far as it was in his power to do so, substantially all of the recommendations of that mayor's commission.

Any questions?

Senator KENNEDY. Good to see you.

Senator HRUSKA. Mr. Chairman, I should like to ask the Attorney General a question.

Most recently, when questions have been posed to Members of the Senate, and especially to members of this committee, as to what characteristics they should look for in a nominee for the position of Directorship of the FBI, it was generally considered that one would get a good passing grade, if he would mention first of all, that such a nominee should have a good solid and extensive career in FBI work; second; that the nominee have broad, effective and seasoned experience in police work; third, that the nominee would not have had any involvement or any association with Watergate-related activities and, finally, that the nominee would not be politically active or partisanly political.

In your judgment, are these factors present in the nominee that we have before us?

Mr. RICHARDSON. Yes, they are, Senator Hruska.

Chief Kelley has had 21 years of experience in the FBI. He has for 12 years been a chief of police, which covers the first two points. He certainly has not had any involvement whatsoever in Watergate or any of its ramifications. Fourth, he has not been politically active, as you heard earlier from Congressman Randall. No one in Kansas City, I think, would be able to say what his political leanings are and no one has asked him in the course of the inquiries into his background. And I would go beyond that, Senator Hruska, as I have already done, and say that while he certainly does meet the essential criteria, he brings much more than this in terms of the degree of quality and character and experience and leadership capacity, as well as his receptivity to new ideas.

Senator HRUSKA. I thank you very much.

The CHAIRMAN. Any further questions?

Thank you, Mr. Attorney General.

Mr. RICHARDSON. Thank you very much.

The CHAIRMAN. Chief Kelley?

Mr. RICHARDSON. You are on, chief.

The CHAIRMAN. Would you hold your hand up?

Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

TESTIMONY OF CLARENCE MARION KELLEY, NOMINEE TO BE
DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

Mr. KELLEY. I do.

The CHAIRMAN. Do you have a biography there before you?

Mr. KELLEY. Sir?

The CHAIRMAN. Do you have a biography there before you?

Mr. KELLEY. No, sir, I have no biography.

Oh, OK, yes, I have one now.

The CHAIRMAN. I am going to place in the record at this time a telegram stating:

"I highly endorse the employment of Chief Clarence Kelley as Director of the FBI. He is an outstanding intelligent citizen and lawman." Signed Rev. John W. Williams, Pastor of St. Stephen's Baptist Church.

Do you know him?

Mr. KELLEY. Who is he? Rev. John Williams is the Pastor of St. Stephen's Baptist Church, which is located at Paseo and Truman Road, Kansas City, Mo. I believe it is the largest black church in the city.

Reverend Williams is a well-known minister, not only in Kansas City but throughout the Nation, and even travels throughout the world on church matters. He is very active in the national organization. He is very active in the civic affairs of Kansas City also.

On frequent occasions, I consult with him and he comes to me to discuss mutual problems; the majority of which affect the black community.

I find him most knowledgeable, most fair and I think over the years we have developed a very close rapport.

The CHAIRMAN. Here is a telegram from Kansas City:

"Urge confirmation of Chief Clarence Kelley as Director, FBI, on basis of outstanding record. Watkins is inaccurate and grossly unreasonable when he says Kelley personally responsible for six deaths in 1968 riots. Under Kelley's administration, Police Department is outstanding in every way. Department has made steady sure progress in dealing with citizens, especially minorities." Signed Orson F. Myers, Kansas City, Mo.

Do you know him?

Mr. KELLEY. Yes, sir, he is a neighbor, a former associate in the FBI, and for about the past 8 years has been retired from the FBI. He left the Kansas City Office of the FBI to become chief of police in Independence, and then Liquor Control Director of the city of Kansas City, and then assistant to the mayor—and there has been mention made of the mayor, who was at that time Ilus W. Davis. He left that job about 2 years ago to become assistant to the man who is in charge of the Crown Center, which is a tremendous construction operation, which is being handled through, and by the Hallmark Card Co., led by Mr. Joyce Hall.

The CHAIRMAN. Here is another one and I guess you know this gentleman:

"College campus police respectfully urge support for Chief Kelley for Director of the FBI." Edward V. McGill, Slippery Rock, Pa.

Do you know him?

Mr. KELLEY. No, sir; I don't recall.

The CHAIRMAN. Another:

"Strongly recommend Senate confirmation of Clarence Kelley as FBI Director. Have found him a capable, fair administrator of unquestioned integrity. Will make the Bureau again an organization of which the country can be proud." Charles E. Wilkinson, M.D., Executive Director, Greater Kansas City Mental Health Foundation and Assistant Dean, School of Medicine, University of Missouri, Kansas City.

Do you know him?

Mr. KELLEY. Yes, I know him. Not well, but I know him.

The CHAIRMAN. Another:

"We, the first FBI National Academy Associates of New England assembled at our Annual Retraining Conference at Brentwood, N.H., on June 18, 1973, strongly urge that you give favorable consideration to the nomination of Chief Clarence M. Kelley of the Kansas City Police Department as the Director of the FBI. His experience and training in local law enforcement added to his administrative ability and personal integrity will give the FBI the stable leadership so necessary during this period when positive direction is vital." Malcolm Donald, Secretary-Treasurer.

Do you know him?

Mr. KELLEY. No, sir.

The CHAIRMAN. Another one:

"Urge the confirmation of Chief Clarence Kelley as FBI Director. Man of the highest integrity. Responsible police leadership in crisis evidence by efficient and unprejudiced manner of terminating rights"—they say "rights" but they must mean "riots"—"in Kansas City some years ago. Developed outstanding police department with evident concern for minority groups. If desired, this telegram made"—they said "made" but they must mean "may"—"be used publicly in support of Chief Kelley." Bishop Joseph V. Sullivan, Auxiliary Bishop, Catholic Diocese of Kansas City, St. Joseph.

Do you know the Bishop?

Mr. KELLEY. I do very well.

The CHAIRMAN. Here is one from Memphis. You were stationed in Memphis?

Mr. KELLEY. Yes, sir.

The CHAIRMAN. Still another:

"I wholeheartedly support the endorsement of Clarence M. Kelley as Director of the FBI." Sheriff Roy C. Nixon, Shelby County Sheriff's Department.

They will be placed in the record.

[The telegrams referred to follow:]

KANSAS CITY, Mo.,
June 18, 1973.

JAMES O. EASTLAND,
U.S. Senate,
Washington, D.C.:

I highly endorse the appointment of Chief Clarence Kelley as director of the FBI. He is an outstanding intelligent citizen and law man.

Rev. JOHN W. WILLIAMS,
Pastor of St. Steven Baptist Church.

KANSAS CITY, Mo.,
June 17, 1973.

Senator JAMES O. EASTLAND,
Capitol Hill,
Washington, D.C.:

Urge confirmation of C. M. Kelley as Director FBI on basis of outstanding record. Watkins is inaccurate and grossly unreasonable when he says Kelley personally responsible for 6 deaths in 1968 riots. Under Kelley's administration police department is outstanding in every way. Department has made steady sure progress in dealing with citizens especially minorities.

ORSON F. MYERS.

SLIPPERY ROCK, Pa.,
June 17, 1973.

Senator EASTLAND,
Capitol Hill, Washington, D.C.:

College campus police respectfully urge support for Chief Kelley for Director of FBI.

EDWARD V. MCGILL.

KANSAS CITY, Mo.,
June 18, 1973.

Senator JAMES O. EASTLAND,
Capitol Hill, Washington, D.C.:

Strongly recommend Senate confirmation of Clarence Kelley as FBI Director. Have found him a capable fair administrator of unquestioned integrity. Will make the Bureau again an organization of which country can be proud.

CHARLES E. WILKINSON, M.D., *Executive Director,*
Greater Kansas City Mental Health Foundation,
and Assistant Dean, School of Medicine.

BRENTONWOOD, N.H.,
June 18, 1973.

Senator JAMES O. EASTLAND,
Chairman, Senate Committee Judiciary,
Capitol Hill, Washington, D.C.:

We, the FBI National Academy Associates of New England, assembled at our annual retraining conference at Brentonwoods, N.H., on June 18, 1973, strongly urge that you give favorable consideration to the nomination of Chief Clarence M. Kelley of the Kansas City Police Department as the Director of the FBI. His experience and training in Federal and local law enforcement added to his administrative ability and personal integrity will give the FBI the stable leadership so necessary during this period when positive direction is vital.

MALCOLM DONALD,
Secretary Treasurer.

KANSAS CITY, Mo.,
June 18, 1973.

JAMES O. EASTLAND,
U.S. Senate, Washington, D.C.:

Urge the confirmation of Chief Clarence Kelley as FBI Director. Man of the highest integrity. Responsible police leadership in crisis evidenced by efficient

and unprejudiced manner of terminating rights in Kansas City some years ago. Developed outstanding police department with evident concern for minority groups. If desired this telegram made be used in publicly in support of Chief Kelley.

JOSEPH V. SULLIVAN, *Auxiliary Bishop,
Catholic Diocese, of Kansas City, St. Joseph.*

MEMPHIS, TENN.,
June 19, 1973.

Senator JAMES O. EASTLAND,
Capitol Hill, Washington, D.C.:

I wholeheartedly support the endorsement of Clarence M. Kelley as Director of the FBI.

ROY C. NIXON, *Sheriff,
Shelby County Sheriff's Department.*

[Letter and prepared statement to Senator James O. Eastland from Senator Hugh Scott]

U.S. SENATE,
Washington, D.C., June 20, 1973.

HON. JAMES O. EASTLAND,
*Chairman, Senate Judiciary Committee,
Washington, D.C.*

DEAR MR. CHAIRMAN: I would very much appreciate your inserting the enclosed statement in the printed record of the hearings on Mr. Kelley.

Sincerely,

HUGH SCOTT,
U.S. Senator.

[Enclosure.]

STATEMENT OF SENATOR HUGH SCOTT COMMITTEE ON THE JUDICIARY

Mr. Chairman, I am pleased to offer some brief comments in favor of the nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation. In listening to his testimony, I was impressed with his educational background, law enforcement experience and philosophy of criminal justice.

I had an opportunity to visit with Mr. Kelley at the time his nomination was proposed. During that conversation, and this has been brought out in his subsequent testimony, he told me that his only objective was to enforce the law fully without fear or favor. I am convinced of his sincerity.

When the full committee considers Mr. Kelley's nomination, I expect to be able to vote in the affirmative. I expect to do likewise when his nomination is considered by the full Senate.

[Letter from James L. Blair, moderator, Christian Church in Missouri, to Chief Clarence M. Kelley]

THE CHRISTIAN CHURCH IN MISSOURI,
Jefferson City, Mo., June 20, 1973.

MR. CLARENCE M. KELLEY,
Kansas City, Mo.

DEAR CHIEF KELLEY: The "Eyeball to Eyeball Conference" sponsored by the Committee on Church in Society of The Christian Church in Missouri, in July of 1969 in Kansas City, in which you were a participant, makes it possible and appropriate that I respond to the attitude of the Black community toward your appointment as Director of The Federal Bureau of Investigation.

I recall your pointing out that to wear the uniform of a policeman is to become sensitive to the plight of any minority group. You asserted skin color gives visibility to black people in the same way that the badge and gun give visibility to the policeman.

I recall that you went on to point out how prejudiced minded people, when it comes to minority groups in general and policemen also, have determined before hand how they will express all of their pent up frustrations, their hurts,

the sense of low esteem arising out of sometimes justifiably understood dehumanizing conditions in their environment.

However, you reasoned, the legislative processes and the courts, not the streets of the city, were the place to redress grievances and to seek justice. You stated that the police were law enforcement officers only, and as deeply frustrated as were the minorities with laws the legislature was giving them to enforce, and the decisions the courts were handing down. You went on to state Policemen must never become law makers with a badge and gun, nor seek to become judge and jury in the exercise of their duties as law enforcement personnel. At the salary levels offered, you spoke of the extremely difficult task of recruiting young men and women who would be intellectually capable and emotionally mature enough to keep this distinction clear in the line of duty.

You further stated that after a few years of seeing your friends shot, stabbed, and verbally assaulted, and while at the same time seeing friendships turn cool of people you thought were socially close associates, look down on you because you were a policeman, you could see they tended to interpret your work as the Chief of Police as backing policemen right or wrong. You assured us this was not the case, because every person serving under you had to understand that if he violates the policemen's code, the policemen would dismiss him from the force, and that the punishment should be scaled to the degree of the offense. You further indicated that some policemen would rather have a buddy system, but you as Chief of Police are in the administrative middle catching "Hell" from policemen wanting favoritism, the Board of Police Commissioners wanting administrative efficiency on a minimum budget, and the citizens wanting highly skilled officers with Ph. D. capabilities in sociology, law, medicine, and psychiatry for less than ten thousand dollars a year before taxes. You indicated you would gladly resign your position to allow anyone to take the job with the capability of performing that miracle.

You will recall that those in attendance were not satisfied with this position. My chief argument in rebuttal was that the Black community has experienced the results of the errors of the legislative branch, judicial branch, and the law enforcement agency of government. When the law denied equal rights to own property, where one chose to purchase property, denied the right to public accommodations, for which his taxes were paid, denied equal quality education and equal job opportunity, then a situation existed, described best in the Declaration of Independence, and, in my humble opinion, demanded that law enforcement be aimed at those tyrants denying Black citizens their inalienable rights by joining in the struggle for liberation as we seek to change laws and bring justice in the courts, not for ourselves alone, but also for those police recruits, who have been denied opportunity and are in the condition they are for the same reasons Black people are deprived.

I expected to get shot. But instead, I heard from you what I considered to be a deep, sincere, confession of faith. You shared my dream and the dream of the founders of the Constitution, and believed that it was on this dream that your commitment to fair and impartial law enforcement rested. You admitted you were not perfect and would make mistakes of judgment, as all humans, but never error in submission of your will to the will of the Divine.

As Moderator of the Christian Church (Disciples of Christ) in Missouri, and an ordained minister, I am called not to stand in judgment of the motives of any man or woman, but to give honor where honor is due. I would therefore, even though I am black and yet not satisfied with law enforcement, legislation, nor the courts, extend to you my prayerfully considered congratulations on being the one person in the world chosen to become the Director of the Federal Bureau of Investigation. I charge you in the sight of God never to yield your will, as God gives you the insight, to any pressure save that of your faith in God. We, The Christian Churches of Missouri, and Metro-Kansas City, have assisted for years in preparing a place for you to "remember" and "evaluate" your commitment, to the table of our Lord at National City Christian Church. I charge you not to forsake the assembling of yourself with others together; "as the custom of some is," for there, and there alone, is the counsel to guide you in your new MINISTRY.

JAMES L. BLAIR,
Moderator.

P.S.—I concur very much with what The Rev. James L. Blair has stated in this letter.

LESTER B. RICKMAN,
Minister-President.

The CHAIRMAN. Now give us your background, please, sir.

Mr. KELLEY. I was born October 24, 1911, Kansas City, Mo., the son of Clarence Kelley and Minnie Kelley; no brothers or sisters.

I entered the University of Kansas and graduated in 1936 after having attended Northeast High School; a high school in Kansas City. I lived just on the outskirts of Kansas City, which at that time were unincorporated but did attend school in the city of Kansas City, Mo.

I graduated from the University of Kansas. The following September I went into the then University of Kansas City Law School which is now the University of Missouri and the University of Missouri Law School at Kansas City. I received my LL.D. degree in 1940, took the bar, passed it, and on October 7, 1940, went into the FBI.

I left the FBI to go into the Navy in 1944, remained until 1946, was a deck officer—I mean an officer on an APA, Amphibious Personnel Attack, and spent the majority of my career in the Navy overseas.

After having returned in 1946, I returned to the FBI and was stationed in Kansas City. From there in 1950, I transferred to Washington, D.C., as a supervisor. I returned to Kansas City again as a supervisor and then transferred to a number of cities. And in 1956, I was made an inspector of the FBI and then transferred to Birmingham in 1957 as special agent-in-charge. I remained for approximately 3 years. In the latter part of 1959, I was transferred to Memphis and retired from the FBI, while there and assumed the job of chief of police of Kansas City, Mo., August 28, 1961. And I have remained since that date there.

The CHAIRMAN. Now you spent 21 years with the FBI?

Mr. KELLEY. Yes, sir.

The CHAIRMAN. Where were you stationed besides the places you enumerated?

Mr. KELLEY. Pittsburgh, well, rather, Huntington, W. Va.; Pittsburgh; Erie, for awhile; Altoona for awhile; then to Washington, D.C. for a stint as a firearms instructor; then to Des Moines, Iowa; then the interlude while I was in the Navy; then Kansas City, Mo.; then Washington, D.C.; then back to Kansas City; then to Houston, Tex., as assistant; then to Seattle, as assistant; to San Francisco as an assistant; then to Washington, D.C., as an inspector; then Birmingham, as an agent-in-charge; and Memphis as an agent-in-charge.

The CHAIRMAN. Now, I have read in the press that you turned some guns over to a man and that he sold those guns for profit. What are the facts about that?

Mr. KELLEY. Gen. Carl B. Turner was a good friend of one of our lieutenant colonels, a man by the name of Don Bishop. General Turner attended a number of conferences of police throughout the country. I had met him and I knew him and he would come through Kansas City on occasion. And on those occasions, he would contact Colonel Bishop and would negotiate, would talk with, would request of Colonel Bishop some guns. And Colonel Bishop would thereafter go to me and ask if they were approved. General Turner would never, and did not on any occasion ever come to me for this purpose.

Colonel Bishop asked me if this would be possible and said that the guns were to be used by General Turner in his capacity as a general of the Army; and his post at that time was as pro-marshal of the Army. And they were to be used in talks made before various civic

groups by him and members of his staff and officers under him and also in a museum that had been established and I approved them, Mr. Chairman, and approved as I recall some over 100 guns of this type; all of them were guns which we had designated to be thrown away, which really has nothing to do with the basic fact that we did give him the guns.

But we gave them to him with the understanding that they were for the purposes, as I outlined, and they were not given to him for his own personal use, and certainly not given to him for any sale, which was brought out in the testimony.

The CHAIRMAN. You have been in the Bureau 21 years. Do you have any opinion on legislative oversight of the FBI?

Mr. KELLEY. I do.

The CHAIRMAN. What is that opinion?

Mr. KELLEY. I am very definitely of the opinion that a properly constituted committee or subcommittee could very well give to the FBI counsel, guidance and direction in matters over which we are in a quandry and which the committee or subcommittee may have some question about.

I do strongly believe that we would be intelligently administering this department if we sought and received the counsel of a group such as this. I have no objection whatsoever to this type of a procedure, nor of a procedure whereby I could on occasion, were I confirmed, report as to our progress.

I have, during the term I have been chief of police, participated in a program which is generally construed as participatory management. I do not feel that it is advisable to just capitulate to suggestions nor to advice. There must be a culling and a consideration. Within our department, we have called many times upon the officer on the street for suggestions and recommendations and appraisals of programs.

So in pursuit of that philosophy, I do very definitely feel that this is a good thing.

The CHAIRMAN. Now, you had some riots in Kansas City in 1968 and, as a result, and as the Attorney General testified the mayor appointed a Commission on Civil Disorder. They investigated you and found nothing improper in your conduct; is that correct?

Mr. KELLEY. Yes, sir.

The CHAIRMAN. I am going to ask that that be placed in the record as an exhibit, the final report, the Mayor's Commission on Civil Disorder, August 15, 1968.

[The above-noted report follows:]

FINAL REPORT, MAYOR'S COMMISSION ON CIVIL DISORDER, AUGUST 15, 1968,
KANSAS CITY, MISSOURI

DAVID R. HARDY, *Chairman*; ROBERT P. INGRAM, *Member*; ARTHUR MAG, *Member*;
MRS. MALCOLM SMITH, *Member*; DR. CHARLES B. WILKINSON, *Member*; ROBERT
S. BOYD, *Executive Director*.

COMMENTARY ON THE POLICE DEPARTMENT

It has been observed in most of the cities of our nation where riots have occurred that the abrasive relationship between the police and minority communities has been a major—and explosive—source of grievance, tension and disorder. The police are faced with demands for increased protection and service in the ghetto, yet the practices necessary to meet these demands create tension

and hostility. The police have often been described as the symbol of what the ghetto resident resents and frequently hates. This has been true in Kansas City, as evidenced by the fact that the riots were almost immediately followed by criticism of the police generally, and by demands of various Negro groups for the resignation of Chief Clarence Kelley. It seems that Chief Kelley has been blamed by some for every mistake claimed to have been made by anyone in connection with the handling of problems during the riots.

This was Kansas City's first experience in major racial violence, and some mistakes were to be expected. There is no question but that mistakes were made by many individuals as well as by governmental agencies and departments and by public school officials. It is doubtful if anyone involved would, in retrospect, feel that everything he did was "just right."

But this City must not fail to give due credit and appreciation to those policemen, National Guardsmen, Missouri State Highway Patrolmen and others who exposed themselves to great personal danger and worked long, sleepless nights to protect the lives and property of all the people of the City. The commendable policy of the police to never withdraw from a besieged area showed both concern for the safety of the citizens living in the vicinity and the bravery of the officers.

This report contains criticism which the Commission hopes is constructive and does not merely amount to "second guessing" as to the actions and policy of the Police Department, Board of Education, City Officials and others. Personalities and comments respecting specific individuals have been generally avoided, so that the Commission could focus on the larger objective of pointing out facts, and making recommendations which might aid Kansas City in moving forward constructively toward the attainment of better community relations and services for all of its citizens.

Nonetheless, because of the vital role of the Police Department in community relations and services, and because of the focus of criticism by some on Chief Kelley, the Commission feels that the entire community should have an objective evaluation from us regarding the Chief, and our belief as to his ability and capacity to head our Police Department in these complex and difficult times. The Commission has heard extensive testimony, and carefully considered it and other evidence pertaining to that subject.

Although there were some differing opinions expressed by witnesses before the Commission, the factual evidence and the overwhelming weight of the opinion evidence from those in a position best to know and evaluate the facts, established beyond question that Chief Kelley is a capable and competent Chief of Police. He is honest and fair, has real integrity, and is highly respected generally by the policemen under his command, including the Negro policemen. He is well qualified for his job, is a good administrator, and utilizes modern and advanced techniques and equipment. Under his leadership the department has steadily improved in quality in most respects. He has the capacity to adapt to changing times and demands, and is now demonstrating this. He is receptive to ideas and suggestions for improvement. The Commission has noted that the Police Department already has implemented several innovations discussed during the course of the Commission's investigation.

When Chief Kelley assumed command of the Kansas City Police Department several years ago, he faced a tremendous job of reorganization. Improvement and change was needed badly in many areas of the Department and its work. At the command level, many replacements had to be made in order to insure that directives and information could flow freely in both directions from the office of the Chief to the lowest patrolman. Human relations training and the relations between the Department and segments of the public were not what they should have been. Although much has been accomplished, there remains much to be done both within the Department and toward improving relations between the Department and the community.

Kansas City is one of only three cities in the United States whose Police Department is not administered under local control. The Board of Police Commissioners is appointed by the Governor, and the major policies, budget estimates and other matters pertaining to the welfare of the Department and the security of the city are determined by the Board of Police Commissioners. The Department is strictly controlled by Missouri statutes that impose limitations on the number of officers, their qualification, promotion and compensation. With the complex problems existing today in urban areas, there would seem to be little reason why Kansas Citizens could not better understand their local needs than can State Legislators and officials, and have control over the policing of their

own community. If the Board which determines police policy were appointed by the Mayor of Kansas City subject to the approval of the City Council, and regulated by City ordinances, it could be expected to have a greater awareness and sensitivity to local problems, than has been shown under state control. The Commission has noted the Governor's recent expression that he would be willing to surrender to the Mayor of Kansas City the responsibility of appointing the Police Board.

There presently exists a frightening shortage of officers to police our city. Our Department strength does not even approach the number of officers contemplated by the statutes (R.S. Mo., Sec. 84.510), and the Commission feels that present day conditions make even the limitations of that statute out of date.

It is also frightening to contemplate the effects of the currently proposed reductions in police officers, civilian employees and services, which are made necessary by the present lack of funds. This lack of funds is directly traceable to the State Legislature and its inability or refusal to recognize the needs of the Kansas City community. The present shortage of funds requires the Police Department to immediately reduce its force by 50 officers and 15 civilian employees; to eliminate school patrols; to defer the purchase of equipment; to close two police stations; to close the Police Academy; and to reduce or eliminate other needed services.

Even before the reduction in force, Kansas City has only 932 law enforcement officers, or 1,119 fewer officers than St. Louis. Kansas City policemen must enforce the law and provide services in an area of approximately 316 square miles, compared to only 62 square miles covered by the St. Louis force. Yet, St. Louis police patrol a population of only 100,000 more people than there are in Kansas City. Recommendations of the Commission for improvements in the Police Department and its function must remain in large part meaningless unless adequate financing of these needs can be secured.

Instead of its police force being reduced, this city needs a total of at least 1,500 police officers. Even the existing statute contemplates two police employees for each 800 persons in the population. Since 1961 Kansas City's population has increased by approximately 15%, and its land area has been nearly doubled by annexation. Expected police service has increased by 58%, but the number of law enforcement personnel has remained approximately the same as it was in 1961.

The police are underpaid. A starting patrolman receives a gross salary of \$532 per month or \$6,384 per year. This compares most unfavorably with starting police salaries in other cities, even though police salaries throughout most of the country are generally inadequate.

In today's urban communities we need and expect policemen with broad qualifications and abilities who can promote good human relations, and who will risk their lives daily for the protection of the life and property of others. Yet we compensate them on a basis lower than that of many who perform labor not requiring education, judgment or discretion, and certainly no risk to life.

Kansas City has a shortage of Negro officers despite the fact that a Negro sergeant is in charge of recruiting, and tries to recruit officers both in Kansas City and throughout the surrounding area. This problem exists throughout the country because those Negroes who would be legally qualified as police recruits can generally find other less dangerous employment elsewhere and at better pay. This situation could be relieved by providing educational opportunities to interested applicants who otherwise do not meet the education requirements. It is suspected that the long standing feeling among Negroes that racial discrimination has existed within the Department also prevents many Negroes from being interested in becoming policemen.

When Chief Kelley became chief of the Kansas City Police Department, there were no Negro civilian employees and few Negro officers holding any rank. Most of the promotions of Negro officers and all of the hiring of Negro civilian employees has occurred in recent years and during the present police administration. In order to prevent any possibility of racial bias interfering with promotions of Negro officers, the Police Department in the last two years has adopted a promotion policy which requires both written and oral examinations. The recommendation of supervisors counts only 10% of the total score. The grades on the examinations are posted, and promotions are made in order from the top of the examination score list. In spite of this, there is still some feeling in the Negro community that discrimination is practiced in police promotions. This seriously hampers recruiting of Negro officers. An increase in the size of the police force

would increase the number of promotions in the Department and tend to remove this feeling.

Under the present administration, human relations training has become recognized as an important part of the course at the Police Academy, but the Commission feels that the extent of this training is still inadequate to cope with today's problems. The Department needs to have an ongoing program of human relations training for all officers. The Community Relations Division of the Department needs to be expanded, and must be headed by an imaginative and creative officer well trained in the subject. It is clear that at least part of the problem, contributing to the prevention of the type of progress that should have been made in this area, has been the lack of adequate funds. Even with the funds presently available, however, more progress in human relations should be made.

It also seems that the Police Department has not adequately publicized its own progress in all areas, including human relations. Although the Department investigates all complaints made by citizens against policemen, it does not usually publicize the action that is taken on such complaints. The public does not know that officers found to be unfit often resign on request. The public does not know that complaints by citizens sometimes result in suspension, dismissal, or reprimand. The public does not know that some complaints are determined to have been groundless and others actually trumped up or fraudulent. Since the public does not know these things, there are some who believe that police officers are protected and go unpunished even when guilty of flagrant misconduct. The public mind must be relieved of such suspicions. The Police Department needs to improve its public relations.

The CHAIRMAN. Also in the record a letter from the chairman of that commission, the Honorable David R. Hardy, an attorney in Kansas City.

[The letter of David R. Hardy follows:]

SHOOK, HARDY, MITCHELL & BACON,
Kansas City, Mo., June 12, 1973.

Re Appointment of Chief Clarence M. Kelley as Director of Federal Bureau of Investigation.

HON. JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
New Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: Since it is my understanding that there will be hearings before the Senate Judiciary Committee in regard to the appointment of Chief Clarence M. Kelley as Director of the Federal Bureau of Investigation, I am taking the liberty of writing to your Committee in support of Chief Kelley's appointment. I am doing so because I have a particular knowledge of the single event in his career as Chief of Police of Kansas City which involved controversy of a nature that might be of interest to you. I refer, of course, to the riots which took place in April of 1968 here in Kansas City following the assassination of Dr. Martin Luther King, Jr. There were six persons who lost their lives during the riots and some of the more uninformed were highly critical of the Police Department and Chief Kelley.

On May 4, 1968, Mayor Ilus W. Davis appointed a five-member Commission on Civil Disorder, consisting of myself as chairman, Robert P. Ingram, Arthur Mag, Mrs. Malcolm Smith and Dr. Charles B. Wilkinson. Each of us spent more than four hundred hours on the work of the Commission during which we interviewed approximately two hundred fifty persons and went into all aspects of the civil disorder as completely as possible.

Basically, our report, issued on August 15, 1968, sought to avoid dealing in personalities and focused instead on improvements that might be made in the future. We made an exception in the case of Chief Kelley and the Police Department because so much attention and criticism had been directed toward the Chief and the Department that we felt the community was entitled to know the facts. In our Commentary on the Police Department, the Commission's Report, which was unanimously adopted, stated our views, in part, as follows:

"Although there were some differing opinions expressed by witnesses before the Commission, the factual evidence and the overwhelming weight of the opinion evidence from those in a position best to know and evaluate the facts, established beyond question that Chief Kelley is a capable and com-

petent Chief of Police. He is honest and fair, has real integrity, and is highly respected generally by the policemen under his command, including the Negro policemen. He is well qualified for his job, is a good administrator, and utilizes modern and advanced techniques and equipment. Under his leadership the department has steadily improved in quality in most respects. He has the capacity to adapt to changing times and demands, and is now demonstrating this. He is receptive to ideas and suggestions for improvement. * * *

For your information I am enclosing a printed copy of the Final Report of the Mayor's Commission on Civil Disorder but I do not have sufficient copies to send the full report to all committee members. Hopefully there should be no real issue concerning this matter but if the Judiciary Committee desires any further information from me, I would be happy to supply it either in person or otherwise.

Based upon the careful investigation made in 1968, as well as my observations during the years he has been Chief of our Police Department, I strongly urge your Committee to approve Chief Kelley's appointment. In these troubled times I could think of no person who would bring greater ability and integrity to the post than will Chief Kelley.

Respectfully,

DAVID R. HARDY.

The CHAIRMAN. Senator Hart?

Senator HART. Mr. Kelley, congratulations on the nomination. I wasn't present when my colleagues from the Congress appeared but as I understand, these are men in the Congress who know you well and have recommended strongly for favorable action.

There are, as you well know, few positions in Government as critical to the proper functioning of the kind of society which we like to think we treasure more important to the functioning of our system, and type of law, as the leadership of the FBI.

The powers of the post that you will hold can be used to protect our democratic institutions or, if improperly exercised, gravely threaten them.

Now in the course of the hearings on Mr. Pat Gray's nomination, I cited several editorial comments. They went this way: That the Members of Congress were a little schizophrenic about the Bureau and in connection with the early phase of the Gray hearings—these editorials stated—some of us seem to be seeking inherently contradictory qualities in the leadership of the Bureau.

The editorials made the point that for a good many years the complaint had been that the FBI was too independent, that J. Edgar Hoover was out in orbit and too independent of the Attorney General of the President, and we now wished the Bureau Chief should be more responsive to us.

But by the time of the Gray hearings, these editorials stated that the FBI leadership was being criticized for being too responsive and not independent enough of the President. The editorial's conclusion was that some of us were trying to have it both ways, and that these competing demands canceled each other out and that we couldn't have it both ways.

Now, what I would like to ask you is, how you view these two goals: responsiveness to our national political leadership on the policy and direction of the Bureau and, second, independence and resistance to political pressure or misuse of the Bureau once you set out on an investigation or you collect sensitive information? In other words, do you feel they are inherently contradictory and it is not reasonable to expect at the same time from the Director independence from pressure once you are off on an investigation, but, nonetheless, respect and re-

sponsiveness to policy and direction? Do you feel those two goals are impossible to achieve or do you think we can hope to confirm a nominee who will be responsive to the President and the Congress on matters of policy and operational procedures and the direction of the Bureau in general efforts and yet, on the other hand, a man who would be fiery independent in resisting and, if need be, exposing any efforts to misuse the Bureau for improper purposes or divert its investigations or compromise its integrity in any way?

Now I know that is a mouthful——

The CHAIRMAN. That sure is.

Senator HART. But nothing is more basic to the kind of society we are talking about nor more clearly descriptive of the political role of your job.

Mr. KELLEY. Senator, I would hope that if you don't get the man you want, that you should persist. And I have no feeling of animosity about answering any question and particularly that one.

This matter of being an administrator in police circles and in the FBI, is one of balance and I think that, first, insofar as balance with the political world, that it can be achieved through—as I mentioned—an oversight group which is restricted, controlled, responsible, and thoroughly cognizant of the need of the confidential nature of the Federal Bureau of Investigation's work. I feel that can be achieved. No question in my mind.

Insofar as the ability of the Director to get along with the Attorney General and the President, I see no problem there. There is apparently some apprehension that there would be pressures which might be exerted which would deter him from a vigorous pursuit of his investigative goal. I think that is unlikely in the first place, but in the second place, no one should be confirmed who bows to any such pressure, and that is all there is to it.

And I can only tell you—and I can't prove it to you except in my experience—I have never bowed to political pressure. I don't even start and that is my feeling about that.

Senator HART. Well, Chief, with you I feel that those two goals are not mutually exclusive and that the American people can expect a man who will respond to the President and the Attorney General and to Congress in our oversight role, or in our role as a legislature, who directs the Bureau to do certain things, but, who, at the same time, can be unswerving once he embarks on an investigation into alleged wrongdoings.

And from everything that I have been told about your background and record, it would indicate you are in that kind of position, that kind of man.

And I welcomed your response to the chairman's question about the appropriateness of oversight hearings and the relationship that may be able to be developed between the Bureau under you and comparable committees of the Congress.

Let me get into some specifics on how that oversight might work. And this question more appropriately I suppose involves the Appropriation Committees but it would certainly be useful to an oversight committee if the Bureau was to present a budget that was more or less a line item budget rather than the total figure which traditionally the Bureau has submitted with an occasional explanation for a particularly large in-

crease. Now none of us expect you to know what form the Bureau's budget has been coming in lately, but as a general proposition, I think you can see the helpfulness to an oversight committee if there was that kind of budget available. Are you in a position to indicate whether you think it might be possible?

Mr. KELLEY. I don't actually know anything about the submission of the budget nor the procedure that is used to present it so I couldn't answer you but I would say anything can be brought up before the oversight committee.

Senator COOK. Will the Senator yield?

Senator HART. Sure.

Senator COOK. Chief Kelley, may I ask you in the preparation of your budget for the Kansas City Police Department, did you have to have a line item budget? In other words, did you have to have a detailed budget of the specific amounts for the specific allocations within the framework of that budget?

Mr. KELLEY. Yes, sir.

Senator COOK. You feel that having had the opportunity since 1961 to prepare that kind of budget, not only to the City Commission of Kansas City, but others, that it would not be illogical that that same type of budget might well work within the framework of the FBI?

Mr. KELLEY. I would imagine; I don't know, Senator. And the preparation, of course, is one of great detail and it was presented in practically a volume. There was full exposure of what this went for and that went for.

Senator COOK. Have you never felt that there was a breach of the integrity of the police department or any of its work by reason of having that particular kind of a budget?

Mr. KELLEY. No, I thought that the budget was well prepared.

I again don't know, Senator, what the procedures of the Department are.

Senator COOK. I understand.

Mr. KELLEY. But I felt this was not an erroneous way to present a police budget, no.

Senator COOK. Thank you.

Senator HART. Well, we respect and understand why you are unable to respond as to how the Federal budget procedure would obligate you to present the budget, but your Kansas City experience permits you to say that a full budget presentation, as distinct from a lump sum, has not been hurtful to law enforcement in Kansas City?

Mr. KELLEY. It has not.

Senator HART. One of the big problems with an oversight role, well, there are two kinds, I guess? One is when a group of allegedly busy Senators assemble to meet a due date and to have an oversight hearing and you come and we ask you whatever somebody has whispered to us as we came in the door—you have that kind of hearing—or an oversight hearing that has been preceded by a very careful exchange of memorandum between the Senators and the agency; preceded by regulations of the agency having been made available to the Senators for study by their staffs.

Now, that is a different and much more useful kind of oversight.

Do you anticipate, when you think of an oversight hearing, the first kind of oversight hearing or the second kind?

MR. KELLEY. Senator, I would hope that the establishment of an oversight committee. I would hope that we would be consulted on it but I would imagine that this would be something that the committee would set up and I would hope that, again, that we would negotiate and discuss the ground rules so far as that committee is concerned.

But I would construe it, again, as the committee's business to promulgate rules and procedures.

SENATOR HART. And in the development of that kind of plan, the assistance of your staff with ours would be of great value and I hope it will be available.

One of the most frequently discussed aspects of the Bureau's operation is the thing that comes under the caption domestic intelligence. As I understand it, that means broadly any surveillance or penetration or data collection not pursuant to some specific criminal investigation, not involving the Bureau's counterespionage rules against those who are actually foreign enemy agents. And the questions that are raised about that, well, I suppose more accurately you might say whenever questions are raised about the Bureau's guidelines and policies in this area, we are cited incidents of vicious bombing or espionage or assassination attempts.

Now, I am not talking about situations where there is an investigation of a crime or reason to believe of an attempt being made to commit a crime in violation of a particular Federal statute. What I want to explore with you is the criteria and the procedures of the Bureau for investigating when there has been no specific violation of Federal law.

A criminal investigation has a beginning and an end, a scope that is measured by the statute in question. But an on-going effort to develop intelligence on a person or group is open-ended in its scope and open-ended in duration. This latter thing, aspect—and I think we understand it more clearly than we did 6 months ago—this does have a potential danger to a society such as ours.

In the case of that type of intelligence effort, let me ask you these questions:

How do you justify the Bureau's domestic intelligence efforts? What is the legal authority? What is the purpose of that kind of data collection and surveillance and infiltration? Can you help me with that?

MR. KELLEY. First, I want to preface any remark I might make by the statement it has been 12 years since I have been in the FBI and I do not know what the present procedures are. In response to your question, I can only say that in all probability you are speaking of—as it is translated into police work—general intelligence. I don't know this term "domestic intelligence," but general intelligence, you have that in the field of crime, you have it in the field of security or the violations of treason, sabotage, and espionage. And that intelligence is gathered not just to be informed generally, but in contemplation of prosecution.

And I know of no intelligence effort which is not so directed, insofar as that goal generally.

I don't know of any, Senator, where it is just a capricious exercise of going out to get information. Always in the thought of the investigators, at least—if I may use the term—in my day—the thought was directed to that type of thing.

It may seem remote at times, but there always can be a tracing to the idea this will some day result hopefully in more information or also, of course, it may be cast aside as perfectly innocent, but there is that goal of finding out whether it is for prosecution or not.

Senator HART. I have the uncomfortable feeling that—well, we have been fiddling around with words and we may be fiddling around with words for a long time and perhaps not really resolving it.

But, you mean that this kind of intelligence is associated with, and undertaken, only when there is the possibility of prosecution?

You wouldn't say that, if we had a broad enough network out here, we just may pick up the fact that somebody may be doing something illegal?

But you do mean that you undertake that kind of intelligence activity when you have reason to believe that John or Mary will do something or you have probable cause to think that John or Mary will do something?

Mr. KELLEY. I would not construe it as a catchall, but there is specific information given on occasion which indicates that there is a possibility of a prosecutable offense.

And I can't quite understand this rather general reference except to say that you do in this work and get a general reference on occasion. And, in that event, it is put in a so-called miscellaneous category. There appears to be no direction to which it will lead and there is nothing done about it. But people do come in and tell you about things.

Senator HART. And I do understand that it has been 12 years since you have been with the Bureau but under your administration, did the Kansas City Police Department have an intelligence unit or operation dealing with possible extremists activities, racial unrest, civil disorders, and that type of thing?

Mr. KELLEY. We have a general intelligence unit, yes.

Senator HART. What criteria did it use in terms of its intelligence activities? What kind of groups did it keep tabs on?

Mr. KELLEY. Insofar as the security field, it would be those who would advocate the overthrow of the Government by force or violence or would invoke violence over citizens of the city through any type of manner, for example, which some have where they ambushed police officers, and we are interested, of course, in protecting our own lives and keeping tabs on that type of thing insofar as the criminal activities; those wherein there is a conspiracy and these are part of the conspirators.

Senator HART. Was this within guidelines?

Mr. KELLEY. Senator, I don't believe so. It is something that existed before I came there and I don't know—

Senator HART. Were there written guidelines at the Bureau?

Mr. KELLEY. Senator, I don't know. It is something that existed before I came there and I don't know.

Senator HART. Well, I would assume that the Bureau does have written guidelines—am I correct in that? As far as you know?

Mr. KELLEY. Yes, they have a manual—I am sure—on security matters.

Senator HART. And that is available to the Congress; do you know?

Mr. KELLEY. I don't have any idea, Senator.

Senator HART. Given the sensitivity of this subject matter, do you not believe that it should be available to us?

Mr. KELLEY. I would think this would be one of the matters to be considered by the oversight committee, Senator, and would hope that it would be.

Senator HART. It necessarily would have to be available, at least to the oversight committee in order that it could make a judgment though.

Mr. KELLEY. Well, I think that there certainly must be some matters within the manual which are confidential. And in keeping in mind my previous statement that this committee would be properly cognizant of that need—and we certainly need to have certain things maintained confidential—I would hope that the committee would take that into account.

Senator HART. Remember, what I am trying to understand now is the criteria that is used or should be used in conducting surveillance; conducting surveillance of citizens. I would think we would all be better off if that was published in the Federal Register. I would go that far.

And that doesn't mean that it has footnotes as to whether we intend to include Woman Suffrages or Black Panthers or Social Labor or grape boycotters or Veterans Against the Vietnam War, or anybody else, but, at least, let us be in a position together so that we understand the standards of the criteria that would be used. Making those available would help.

Maybe a few years ago, we just didn't focus on this, but given the events of the last several years, I, for one, feel an obligation to try to get a handhold on this one.

Now, if you can remember, you said that the Bureau did have written instructions, and I think, or I understood that the instructions included the standards for surveillance. Do you recall—thinking back now to Birmingham and Memphis—what standards were available to you as special agent-in-charge in deciding what groups or individuals involved in activities relating to civil rights in those areas in those days should be under surveillance?

Mr. KELLEY. The surveillances that you speak of, I presume, are that category of following people and observing their activities. And as I recall it, it still is within that general requirement, that is, that this be to gather evidence leading to a prosecution.

Senator, I know of no capricious surveillance. I just don't recall any that was not directed toward prosecution or the establishment of an offense. Well, let me alter that—well, yes, that is true; I don't recall any.

Senator KENNEDY. Would the Senator yield at this time?

Senator HART. Yes.

Senator KENNEDY. Mr. Kelley, one of the reasons the committee is as sensitive as it is on this issue is because many of us went through rather extensive hearings in Senator Ervin's committee about the Army surveillance. Those hearings took place over a period of several weeks just over a year ago. And in those, a number of these issues and questions had come up, where there had been requests of the FBI for the criteria which have been followed in establishing the surveillance procedures of different groups that were to be reviewed.

And this really all came about as a result of a young Army person who was in an intelligence division—I believe he is out in Chicago now—who blew the lid off this whole surveillance procedure that had been used. And he remembered Congressmen, Earth Day groups, and a wide variety of other groups, which apparently it would seem at the outset would have no real kind of threat to the security and the kinds of sensitive concerns you mentioned, being investigated.

Now, obviously, they were investigating some of these other groups as well and quite appropriately so.

But I think this perhaps gives you some idea of the reasons for this kind of line of questioning, because Senator Ervin's committee, had gotten some information of surveillance, as I said, all the way from Members of Congress to university professors, to students, Earth Day activists, and a wide variety of other groups. That was primarily the military surveillance, of course, but there was some evidence of a tie-in, and of use of FBI agents as well.

It was really to clarify this particular kind of issue that I had hoped we could get some response from you. I think you have been helpful in attempting to respond to these questions of Senator Hart, but I just wanted to let you know or give you some idea of why the matter is being pursued or, at least, why I would feel it is being pursued, and why you would realize that we would have some interest in this.

Mr. KELLEY. Senator, we had one of our officers go to one of the college officials asking for the names of some demonstrators and, apparently, it was his—well, I know that it was his own idea—and immediately upon learning that this was a sort of shotgun type of an approach, we stopped it.

And I don't believe in that type of thing. I believe very definitely that there must be a purpose and there should not be any indiscriminate following of people and watching them and that type of thing. We are not in the business of doing something as careless as that with human rights and dignity.

Senator HART. I am grateful to Senator Kennedy for indicating why, in part, we are concerned about this. Let me go a little further by way of the explanation so that you will understand that this is not intended as an effort to badger you or in any sense embarrass you, but we are trying to get an understanding of how to handle two very basic and, I suspect, competing obligations. On the one hand, you run the risk of intimidating and hindering legitimate activities—legitimate in this country—so that if a group of people—organized formally or informally—or potential members of that group know that they are being watched and know that files are being made on them, and think that they perhaps are being infiltrated, that inhibits legitimate citizen activity.

So we have that one problem balanced against the claim that our security obliges you to prevent criminal actions occurring, and if you keep an eye on potential troublemakers, rather than waiting for the specific crime or the crime in fact to occur, you are properly protecting society.

Now that kind of prevention, if it is carried to an extreme is a police state, pure and simple. You watch everybody who isn't bedridden so you just watch everybody just in case there is a potential for

crime—and there is a potential for crime in each of us—so you watch all of us. And that is the tough balancing that we are worried about.

And I might note here the key word is “potential”; potential crime. Now, how much information do you have to have to make it crime probable—before you start looking at people and opening up a file on them, especially if we are talking about more than just showing up at a rally, that is, a bureau man just showing up at a rally and where we get into the infiltration business or the very extensive filekeeping that Senator Kennedy mentioned. To be specific—and unrelated to the Memphis and Birmingham civil rights—there were some few people who opposed the Vietnam war who engaged in unlawful activities. But do you say that merely because a few engaged in unlawful activities that, therefore, we should open a file on every leader of every group protesting the war in Vietnam—perhaps even those active but less conspicuous in such groups—because we don’t know if any of them might become involved in some troublemaking and we must investigate all of them. That starts you down the road. Indeed, that puts you pretty well down the road to the police state, and that is why we need some very careful criteria. That is why I feel and others feel that this committee and this country should know when you get on that road and under what conditions you go down it.

Now, that is exactly what we are asking and in the weeks ahead, when oversight becomes a reality, that is what we are trying to do.

Mr. KELLEY. Yes, sir.

Senator HART. I have other questions, Mr. Chairman, but I have taken too long now and I will yield for awhile.

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. Mr. Kelley, you have indicated that in your belief there is a confidentiality that does attach to intelligence work and, particularly, to the kind of work that the FBI is engaged in.

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Would it be fair to say that certain work of the FBI would require that there not be a compromise of its resources, that there should not be a disclosure of the methods by which they attain certain legitimate and necessary information?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Would that be true?

Mr. KELLEY. That there should be no compromise of the methods and there should be confidentiality established insofar as the procedures, yes.

Senator HRUSKA. If there is not the confidentiality to certain types of investigative files, would that not have a harmful effect upon future investigations by FBI operators?

Mr. KELLEY. It would have.

Senator HRUSKA. And that is one of the reasons for the confidentiality being necessary, isn’t it?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Now, then, if there is a manual, for example, which contains the methods, the procedures, the situations that confront the FBI from time to time, if such a manual were put in the Federal Register, as containing those methods and procedures, as some people may suggest, would that help or would that hurt the FBI and its operations?

Mr. KELLEY. Oh, it would definitely hurt the operations of the Bureau.

Senator HRUSKA. In the case of the budget—and the budget of the FBI, I want to assure you, is quite different from any police department's budget in America, including that of Kansas City, Mo. I say this because I have served on the Appropriations Committee for a long time and I know how this budget is structured and its contents. Now, if that budget contains certain resources, coin of the realm, as it were, that would be definitely branded for some things which would result in a compromise of resources or a disclosure of methods or operations to the detriment of the FBI, would you still be in favor of a line item budget of the FBI, when you come up before the Appropriations Committee?

Mr. KELLEY. This type of information must be protected and, if it is necessary to set it aside and maintain it confidentially, it should be done if it were to in some way compromise the confidentiality and the ability to conduct investigations.

Senator HRUSKA. Much has been made of certain Army intelligence activities in recent years. We like to remind ourselves that about 4 to 4½ years ago, there was a complete revision of the methods and activities that were resorted to and a pretty clear purging was made of the situation.

And in the discovery of this situation, as to the disclosures by certain Army captains, it also was brought out that many of their activities, in picking out politicians and other figures, upon which to build files, were frolics of their own and not under instructions from superiors. We must, of course, view these allegations objectively and not jump to conclusions.

We must be careful when we get into the business of saying, we must prevent and avoid a vast network of intelligence because it would be a big brother type operation. I know of no one who advocates a big brother system.

However, we do have situations where circumstances point to a reasonable conclusion that there is some malice in action and that there will apt to be a ripening and a fruitfulness of that effort to a harmful effect—whoever the group may be. At that point, if we got into the field of wiretapping, would there not be a necessity of the FBI under the present rules, to go to a court and tell the court, here are the circumstances that we believe warrant wiretapping and we have tried to get the evidence in other ways and we have satisfied the requirements of the Federal wiretapping law. Therefore, we come to you now for permission to plant a wiretap or other electronics surveillance under all of the conditions prescribed by law.

If the judge says, no, that you have not made a sufficient case, then you may not go ahead. Is that, in general, your understanding of the Federal wiretapping law?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Have you in the State of Missouri a wiretap law that permits wiretapping and electronic surveillance under any conditions?

Mr. KELLEY. No, sir.

Senator HRUSKA. We don't either in my State. Many States have an expressed prohibition against it. However, in the jurisdiction of

the Federal Government, there is a well-considered, well-studied proposition in this regard. The fashion in which that wiretap statutes are working is very satisfactory and has proved very useful in getting at organized crime, particularly.

And the record on that is clear, although not well-noticed enough and not well-published enough, but the record is clear that it has those safeguards I've mentioned.

Among the safeguards, however, there is not the requirement for the publication in advance of the district attorney's appearance before the district judge for that wiretap order. In other words, there is no requirement that he publish that appearance in the Federal Register 10 days in advance. That would be foolhardy, wouldn't it?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Let me ask you this: You are familiar with the Criminal Reports Information Center here in Washington, are you not?

Mr. KELLEY. The Criminal——

Senator HRUSKA. The Criminal Reports Information Center.

Mr. KELLEY. No, sir, I am not familiar with it.

Senator HRUSKA. With the National Information Center?

Mr. KELLEY. Oh, the National Crime Information Center, the NCIC? Yes.

Senator HRUSKA. What is its scope? What is its nature? What information is deposited therein?

Mr. KELLEY. Information concerning wanted persons, automobiles that are stolen and have been missing for a period of time and which would indicate that they were actually stolen and not misplaced and not taken for a joy ride, the identification of stolen property which is identifiable by serial number, like——

Senator HRUSKA. Securities, for example?

Mr. KELLEY. Yes, securities. This type of information is within that center.

Senator HRUSKA. Now, a good deal of criticism has been made of information centers that contain arrest records, which are incomplete and, therefore, if they are disclosed, unless they are complete, they are highly objectionable and unfair to the person that has been arrested. You are familiar with that situation, I presume?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. And what are your thoughts on that?

Mr. KELLEY. There must be built into the system a means of preventing the disclosure to the outside public and any citizen who might want it, but the arrest information and the entire criminal record of the man is very helpful insofar as the investigation of a matter. And there are cases when a man may have been arrested and there has been no disposition of the case since that arrest; it is still pending in other words. And yet this is important information. This is very helpful to the police throughout the land.

Senator HRUSKA. Well, it is believed that in fairness to the one who has been arrested, that if his arrest record is transmitted to an inquirer, who is qualified and authorized to make the inquiry, there still should be a complete current status of that arrest record, to wit: either that it has been dismissed or it is still pending. And without that concluding chapter to the arrest record, the arrest record, itself, should not be disclosed. Does that impress you as fair?

Mr. KELLEY. I construe that as unfair to the police inasmuch as we use these and have for years. And the fact that it is now on a computer does not in the least alter the procedures that we had before, where many dispositions were not listed. It would be well and we would like to have the dispositions. And, on occasion, we must communicate with the arresting agency to see what the disposition was. We would like to have it but it is practically impossible, and economically, it is extremely expensive. Again, we would like to have it but we just can't do it.

Senator HRUSKA. Now, increasing resort is had to electronic surveillance; to computer electronic data for information available to law enforcement authorities. One of those is found in that Project ALERT. Does Missouri and does the Kansas City Police Department participate in the ALERT project?

Mr. KELLEY. We originated it, Senator, and it is a procedure which gives the officer on the street a response to his questions, as to stolen property, as to wanted persons, as to the record of an individual. It gives him capability at his fingertips, or rather right there with the computer and the radio and gives him the capability of getting answers, which prior to that, they have taken several minutes and caused people to be stopped and detained until the answer came and it might have been a half hour. But now he can get it almost instantaneously.

Senator HRUSKA. And how many States participate, or what territories participate in the ALERT activities in the Kansas City, Mo., area?

Mr. KELLEY. We have, as I recall, the last time, we had about 65 terminals, which includes several in Kansas City but it includes also surrounding police departments going as far as in the one case about 165 miles. And it goes into Kansas and, eventually, we will complete a network within the State of Missouri to include the highway patrol of Jefferson City and the city of St. Louis. It eventually will, in all probability, be joined with other computers, but that is the extent of the network right now except that we are all now on the NCIC line.

Senator HRUSKA. Has it been a useful device?

Mr. KELLEY. It has indeed.

Senator HRUSKA. Do you feel it is an unwarranted imposition on the rights of the privacy of the citizenry at large?

Mr. KELLEY. I do not. We had complaints at first about some inclusions and we have straightened those out. I do not feel by any means that it is an invasion of their rights.

On the other hand, I think it gives better protection to the people and better police work generally and, again, this is a matter of balance. And where there are violations of rights or an invasion of rights, we will certainly try to correct them. But in the long run, the great benefit to the police, to the public rather, is such a tremendous boost that we feel that it helps.

Senator HRUSKA. Well regarding the criminal arrest record, this committee has taken a dim view of any collection of arrest records that would not be complete enough to take into consideration the disposition of that arrest. And, absent the completion of the record and the current status of the arrest, we have frowned upon the idea of disclosing the facts of arrest at all. It has to be a complete record or none at all. And, personally, and I know this committee has acted that way

officially, that would seem to be the fair way of going about it because, after all, an arrest is simply an accusation of a crime and there is a presumption of innocence until there is proof to the contrary.

That is all of the questions I have at the present, Mr. Chairman. I will reserve for a later time additional questions.

The CHAIRMAN. We will recess now until 2:15 p.m.

[Whereupon, at 12:15 the committee recessed for lunch to adjourn at 2:15 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Kelley, I too want to join with those that have presented a word of congratulations to you on receiving this nomination for this position, and achieving the President's confidence for this position. You certainly were given a flying start this morning with the fine words of endorsement by Senator Symington and Senator Eagleton and Attorney General Richardson and the others that spoke in your behalf. So I want to, at this late date, extend a warm word of welcome to you and also indicate how much I appreciated the chance to talk to you privately several days ago about some of the matters of particular interest to me and other members of the committee.

I think you will probably understand, as we go through these questions, that this committee has been extremely active in consideration of a number of nominees to very important positions, that is the positions of Attorney General and Director of the FBI. So, a number of the questions that we raised on matters that have come up and that many of us feel should be fully aired, to some extent express our own individual views. However, we also feel it is generally useful and helpful to ask them in making the kind of record which I am sure you would like to see made.

I am sure as the other members of the committee ask you questions there will be some areas which have been touched on by one member or another, but will be further gone into by the particular Senators. We hope you will be patient with us as we go through a number of these items.

During the course of our conversation which we had in my office we reviewed the issue of the politicization of the FBI. I know Senator Hart talked with you a bit about that issue and you gave some response to his statement, and I think others have indicated this morning—Mr. Richardson included—that they felt that even your own political designation was unknown to those who were seeking out a person to assume this responsibility. You have given us some reassurances in those areas, but there has been in our most recent consideration of a nominee a number of activities which that nominee really didn't feel were political in nature and he answered that he too wanted to keep the FBI out of politics and believed that he did. Nonetheless, he did perform functions and services which I think could have been quite conceivably—and as far as I was concerned—were things which were involved in the political arena.

I would be interested in gathering from you what your reaction might have been if you had received a memo from a White House

political aide, as the previous nominee did, when he was Acting Director, asking you to speak at a particular event to assist in the President's reelection campaign. What reaction would you have given to that memorandum if that had crossed your desk?

TESTIMONY OF CLARENCE M. KELLEY—Resumed

Mr. KELLEY. I would notify the Attorney General I had received such a request and would have refused to appear.

Senator KENNEDY. If you had been asked to gather political-type information for use at White House political appearances, what would have been your reaction to that?

Mr. KELLEY. The same thing. I would have notified the Attorney General and I would not have complied.

Senator KENNEDY. What about if you had been asked to provide to a White House aide investigative materials on a pending case involving a White House aide, without telling the Attorney General or your own people you were doing so? What would you have done if that request had been made of you?

Mr. KELLEY. I would have refused.

Senator KENNEDY. Would you have notified the Attorney General?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. If you had been asked by White House aides to take documents that were described as political dynamite with the suggestion that they never see the light of day, what would you have done?

Mr. KELLEY. I would have refused and informed the Attorney General.

Senator KENNEDY. Would you ever have asked the Attorney General what he would have done with the information, or would you just have notified him and left it there, or would you have asked the Attorney General what his reaction to any of these requests would have been and what he was doing about it, or would you have felt that just the fact of notifying the Attorney General was sufficient?

Mr. KELLEY. As far as I am concerned, the notification would be sufficient.

I would not, were he to ask me to do it, do it.

Senator KENNEDY. I'm sorry?

Mr. KELLEY. It would make no difference as to what he were to ask me. I wouldn't do it—well, I don't know what exactly would be the complete gist of your question but—

Senator KENNEDY. Suppose the request had been made of you that you either collect information, or that you make appearances, or that you provide FBI files to a White House aide or aides, and you subsequently turn down all such requests and notified the Attorney General of them. Would you ever think of asking the Attorney General what he did about it after that or would you just feel that notifying the Attorney General that these requests had been made of you would be sufficient to meet your responsibilities?

Mr. KELLEY. I would construe that as sufficient; having notified him of the request and my refusal.

Senator KENNEDY. I know this will be an exceedingly difficult question and I probably know what your answer will be, but let me in any

event ask it of you. What kind of assurances can you really give to us that you will have some procedures to handle requests of you from people in high positions, who have some degree of trust and confidence with the President of the United States, for information either on various investigations that you are conducting or individuals which you may have a file on?

We have seen in the immediate past where those procedures have been rather routine in giving those people what they wanted.

I am interested to the extent that you can provide us with the procedures that you are going to establish to insure that only people that have the responsibility for these things are going to have access to these materials or investigative reports?

Mr. KELLEY. Senator, that is correct; only those entitled to it would receive this information, yes, sir.

Senator KENNEDY. If the counsel to the President were to call up and ask you to send certain files over to him, what would be your reaction in that case?

Mr. KELLEY. Refuse it and abide by the general rule that only those authorized—they being the Attorney General and the President through the Attorney General—would get this.

Senator KENNEDY. What if the fellow calls up and he is the counsel for the President and he says it is all right because he is acting as counsel for the President, and asks you to send over this file for him that afternoon?

Mr. KELLEY. I would notify him to probably submit a memorandum or a letter to the Attorney General and proceed through him.

Senator KENNEDY. So, you mean unless the President were to indicate direct interest—I suppose either directly or if the request were to come through the Attorney General—you wouldn't comply with that request.

Mr. KELLEY. That is correct.

Senator KENNEDY. And you would want any kind of request to be written in nature?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. An oral request would not satisfy you?

Mr. KELLEY. Of the type you asked: it would not satisfy.

Senator KENNEDY. What kind of oral request would apply or would be responsive or would satisfy you?

Mr. KELLEY. I would not have any oral request, Senator, but you are speaking of it having come through the counsel.

Senator KENNEDY. What about the Attorney General? Who are you going to release this material to in the Attorney General's office?

If an Assistant Attorney General in the Civil Rights Division, for example, calls you, will you supply information to him?

Mr. KELLEY. Senator, I actually do not know who is working within the Attorney General's office—

Senator KENNEDY. Right.

Mr. KELLEY. But I certainly will acquaint myself and be governed by what is the proper manner to do this.

Senator KENNEDY. If we could be somewhat more specific, what level of authority within the Attorney General's office would you require to make information available to them?

Mr. KELLEY. I am inclined to believe that the position of Director of the FBI, that, the proper person with whom I should deal is the Attorney General and this is what I hope would be established. And I feel that is the best way for me to transmit any information of this type.

Senator KENNEDY. Suppose that the day after you are sworn in as the Director of the FBI, you had a particular police officer—perhaps who had served with you in Kansas City—whom you wanted to be your special assistant. Would you expect that there would be any approval or disapproval of him on the basis of any political investigation, or do you think that if you indicated that you wanted a special man or you wanted the special men to work with you, that that wouldn't be subject to any kind of scrutiny?

Mr. KELLEY. I would not want nor would I countenance any such scrutiny as a background or a need so far as a position I might want to fill. That has no bearing on it whatsoever.

Senator KENNEDY. Suppose you wanted a particular person and someone in the Justice Department said they just want to run a screen on him or something of that description. These things aren't, you know, terribly unusual either in law enforcement or in other areas, and that is from what I know in terms of our New England situation in a number of different instances. So I am just wondering what your reaction would be if someone in the Justice Department said that even though you wanted somebody, they just wanted to screen that person. What kind of reaction would you have to that?

Mr. KELLEY. I would say that is not necessary and I would not countenance that. The capability of the man is all that is or should be the criteria to be used and no political affiliations would have any bearing on his choice.

Senator KENNEDY. This morning we reviewed the possibility of appropriate oversight of the FBI. You reviewed with Senator Hart and later with Senator Hruska some of your views about materials which should be made available to this committee, and I think you reviewed with Senator Hart your views about the value of such oversight. I gather that you felt that appropriate oversight by an appropriate congressional committee would be useful and helpful and strengthen the FBI.

Mr. KELLEY. Yes, sir.

Senator KENNEDY. And that you would cooperate and work both with the members of the committee and, hopefully, with the staff of the committee, and that the staff of the FBI and the staff of the committee would cooperate.

Mr. KELLEY. Well, I don't know the particulars. I would depend upon the committee to set up a working arrangement and hope that we could discuss it and work out the details.

Senator KENNEDY. Well, one of the items that was talked about this morning was the budget item, the detailed budget item. There was some exchange with you and Senator Hart about the kind of material or the kind of information that would be made public with the revelation of a detailed budget item, and you had an exchange with Senator Cook as well about what was happening in your own police department.

You don't have any doubt at all in your own mind that the FBI has a detailed budget, do you?

Mr. KELLEY. Well, they would have to have an allocation, yes.

Senator KENNEDY. So it is just really a question as to what the Congress and the public are to be told about it, is it not?

Mr. KELLEY. I would say that in all probability that's right, yes.

Senator KENNEDY. Can you give us any idea as to what expenditures by the FBI the public shouldn't know about?

Mr. KELLEY. You said, should not know about?

I frankly had never looked over the detailed budget of the FBI. I'm completely ignorant of the setup of the budget and I could not answer your question at this point.

Senator KENNEDY. Well, can you think of any of the activities, say, involved in your own police department or in fulfilling your own police function, that the people in your city should not know about?

Mr. KELLEY. I don't know of anything particularly. We are somewhat loath to mention some things; particularly how many people we have assigned to certain parts of our department inasmuch as some people may feel there should be more or should be less, but we are on the other hand, as full in our disclosures as I can possibly think of being.

There are always some difficulties insofar as informant payments and rather than to get into difficulties in that particular thing—well, and as a matter of fact we are completely disclosing on all occasions everything, including informant funds, to the City Council and holding back nothing from them, and as a matter of fact, it would be the same type of thing as I would contemplate in the Oversight Committee: to hold nothing back from the Oversight Committee. But there could well be a conclusion by both them, and us, that it be better that it not be exposed completely.

Now, I don't frankly know what is in the budget, again, and I can't answer without that knowledge.

In our particular Department it is published and available to anyone, so I suppose in a breakdown, such a breakdown, anyone knowledgeable about accounting procedures could pretty well ferret out details that they might want.

Senator KENNEDY. Obviously not the names of informants, though.

Mr. KELLEY. That is right; no names.

Senator KENNEDY. Or what they are particularly informing on?

Mr. KELLEY. That is right.

Senator KENNEDY. But the total amount that would be used for informant would be revealed in your police budget, would it not?

Mr. KELLEY. Senator, I can't answer that directly—that is, whether or not it is within the Investigative Bureau's budget or not. I am inclined to believe that it probably is carried within a lump sum for the investigative operations. So rather than answer you categorically, I would say that I don't really know how it is handled.

Senator KENNEDY. Do you see from a law enforcement viewpoint difficulties or problems in indicating that *x* amount of money is being used to pay informants since perhaps, people would want to pay more if they thought it was going to be insufficient, or would want to pay less?

Is there any reason why, from a law enforcement point of view, that the amount that is being used to fight crime—organized crime—drug addiction, narcotics—should not be published?

Is there a reason, from a law enforcement point of view, why just that lump figure should or should not be made available?

Mr. KELLEY. There are certain schools of thought that the more you publicize the informant payments, the more uneasy becomes the criminal. And I don't think that there is any merit in such a matter.

The only thing that you need to do is to be truthful about what the use this money is being put to is, and at the same time, not disclose all of the details of the work—such as you mentioned. And certainly the amount, there might be a breakdown even within such an accounting as we have mentioned, which would reveal, inadvertently, something about the work.

When you reveal the name of the informant, you of course have broken a confidence which is irreparable.

Senator KENNEDY. Yes, and I don't think there is any member of this committee who would suggest that ought to be the case. As a matter of fact, in my conversations with those that are involved in drugs and narcotics law enforcement—Federal as well as local agents in the Boston area—they revealed that the amount that has been paid for the informants is woefully inadequate. Their own belief is that raising that amount of resources and funding would be the most effective way of doing something to fight drug addiction, and, that with just the few thousand that they have had available each year, they could never find out who the really big pusher is.

So, they felt, if they could talk in terms of \$10,000 or \$20,000, that the whole fight of doing something about narcotics and the control of it would then vastly improve.

And I have listened to a number of them and I think they make a very strong case for that. Do you think people would be surprised and dismayed at the small amount that is being used to pay informants, or would they be concerned that too much is being used to pay informants? What do you think would be the reaction within your community?

Mr. KELLEY. I don't believe that the citizens generally have the sophistication of knowledge to know whether or not it is too little or too large, and I do feel that most police departments feel that there is too little. The use of informants is of long standing and must, however, be carefully controlled. And I think law enforcement has grown up some so that they can control the use of informants; it is one of the tools of the profession, but I seriously doubt that people realize to any extent the usefulness of the informant.

Senator KENNEDY. Do you think at least part of the reservation about revealing the amount of money that is being used in gathering information is that some law enforcement groups want the citizens to believe that there are more informants in the community than there really are in order to create an atmosphere where the criminal feels if they do commit a crime, their chances of getting caught are more severe?

Mr. KELLEY. That might be a theory. I have never employed it myself. There are a lot of ways whereby there is somewhat of an impression left that might actually cloak the actual situation. For

example, in an effort to appear friendly to a hoodlum the officer might shake his hand in a public place to let it be known that he appreciates his help and this type of thing.

Well, that isn't really effective. There might be various tricks, so-called tricks of the trade used, but the best way is an open and above-board stand on this and if there is real reason to not disclose this informant information—and in most cases there is a real good reason—the administrator should not be reluctant to say, "I don't think this is a proper thing to do and therefore it is not being done."

And it is not necessary to engage in any subterfuge, but just come right out and say it.

Senator KENNEDY. Of course, as I mentioned before, no one is asking for the names of the informants or the informants in particular categories. I'm just interested in the lump figure that is being used. That is the point I was making. Can you think of an expenditure category that the Congress should know about? You expressed some concern here, and as I understood your concern, it is about giving away either the names or the areas where informants are working in such a way as to compromise the effective law enforcement. But can you think of any general category of expenditure that the Congress shouldn't know about that may be in the FBI?

Mr. KELLEY. I can't imagine anything that could not be brought before this oversight committee, and if there be anything that there seems to be some reluctance to give public and complete exposure to, that is the place to discuss it.

I frankly don't know enough about it to say other than that.

Senator KENNEDY. Is there any reason why the public should not know what the standards are for the FBI in, say, deciding which groups are going to be infiltrated or which groups are going to be put under surveillance? Do you see any reason why the public shouldn't just know the standards which are being used by the FBI to make a decision as to whether such group will be actually infiltrated?

Mr. KELLEY. As I mentioned before, Senator, I don't know what the standards are for that type of investigation, but I would again be willing to talk about this, as well as other matters, with the oversight committee and I think that we can, through such a procedure, get an understanding of what should be and can be given public exposure. And in the field of law enforcement there are things which I am sure that investigators would feel should be kept confidential.

On the other hand, there might be citizens or professional people who say this should be given public exposure. And that is the type of thing that can be worked out, I am sure, in the climate of a review of the operations in the oversight committee.

Senator KENNEDY. Do you think the public ought to have the right to know whether infiltrators into any of these groups are under instructions and whether they ought to encourage and participate in any activity? Should the public know whether they are instructed either to participate or not to participate in any particular organization?

Mr. KELLEY. I think that is an operational matter which is subject to many interpretations and on occasion law enforcement becomes too isolated in its position and fearful of exposure, fearful that they are going to be hampered in their investigations.

So it is good to have the input from those who are not directly inside the organization, not in the profession, and I would say, here again, this is another area for review and consideration.

Senator KENNEDY. Well, I will not ask the question again.

But to make sure I understood you correctly, do you think that there are any circumstances where FBI agents ought to be instructed to participate in criminal activity when they are infiltrating a protest organization?

Mr. KELLEY. If that be your question, there are no circumstances wherein they should be authorized to go into criminal activity.

Senator KENNEDY. I suppose part of the problem we are confronted with in any kind of an oversight situation is not having the basis of information of past activities of the FBI. If we are unaware of at least some of these instructions or what these standards are or what is in the Bureau or what is in the manual for the past, it makes it exceedingly difficult to have the kind of constructive dialog which I think was suggested in Senator Hart's No. 2 category.

So I would certainly hope that you understood in that particular kind of a problem that those that are interested in working in a constructive and positive way with you in the oversight, would have difficulties without this information in trying to reach you halfway on this question.

Now, in the Sunday Post it detailed some of the problems you had in preventing misuse of ALERT files on militants and activists.

Does your computer show the reliability of the source of any information in it?

Mr. KELLEY. No, sir.

Senator KENNEDY. Does it concern you or is that important? Should that be important?

Mr. KELLEY. It is.

Senator KENNEDY. What do you do about it then?

Mr. KELLEY. We at first, admittedly, were pretty generous in inclusion of certain categories and we had a couple of groups come in—one from some sort of a national security organization up in the East—and review our operations, and they commented that they thought that there were many included who should not have been. So they were purged. And the files now, and the names within the computer, are based on what we think are reliable sources.

It does not say so when the message comes out, but all are based supposedly as a result of a review to make that determination and include those—

Senator KENNEDY. Is there a sort of a constant purging of these files, then?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. How does that work?

Mr. KELLEY. Well, it is a review that is made. I don't recall how regularly it is made, but it is about every year and oftener as an individual case comes up.

It might well be that there is quite a review made. Recently this was true. We are well cognizant of the fact that you can overburden a computer with junk and to avoid that we are very careful.

Senator KENNEDY. As I understood from the newspaper report, there was a problem out in Lenexa—is that the right pronunciation?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. The Lenexa, Kans., terminal. Could you tell us a little about it and what could be done to prevent that from happening on a national scale if this computer was set up nationally?

Mr. KELLEY. We are the operators of a large computer, Senator, and our terminal lines go out to various cities and towns and counties surrounding the metropolitan area. And before a city, town, county, or other law enforcement group can get a terminal, they must sign a contract that they are going to maintain security and that information secured from the computer through this terminal will not be disseminated except to authorized personnel; they being members of the law enforcement family.

Lenexa is, I would say, 30 miles from Kansas City. It was noticed by one of our computer people that quite a number of inquiries were being made about the records of various individuals and, of course, many of them had no record. It was of such magnitude that our suspicions were aroused. We made an inquiry and found that the officer making the inquiries was apparently doing so for a rental agency and some businessmen. As to whether or not he was selling them this I don't know, but he was passing this out.

Senator KENNEDY. What kind of officer?

Mr. KELLEY. Sir?

Senator KENNEDY. What kind of an officer?

Mr. KELLEY. He was a police officer.

Senator KENNEDY. I see.

Mr. KELLEY. And that is a violation of the contract. And he was reprimanded for that and they were advised that any further such violation would mean that the terminal would be taken away from the Lenexa Police Department.

The chief was informed that the particular officer should be given strong counseling about this and we have had no other violations that I know of.

Senator KENNEDY. Was that a violation of law that he disclosed that information?

Mr. KELLEY. No, sir. Not that I know of.

Senator KENNEDY. Do you mean a police officer could disclose this information and it wouldn't be any violation of the law?

Mr. KELLEY. I don't know about in Kansas. It is not in Missouri. Convictions, not arrests, but convictions are a matter of public information.

Senator KENNEDY. You don't have any information in that file that isn't a matter of public information?

Mr. KELLEY. No, we have arrests and we do not in all cases have each arrest shown; that is, the disposition of each arrest, but convictions insofar as the State of Missouri is concerned, are construed as public information. Kansas, I don't know.

Senator KENNEDY. Well, it is a collection of general intelligence information on that computer file, is it not?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. And an officer, you were saying, can reveal that general intelligence information without having any fear of violating any State law, at least not in Kansas. Is that correct?

Mr. KELLEY. I would like to have your interpretation of general intelligence.

Senator KENNEDY. Whatever is on that computer file.

You have given us some information as to the material that is on that computer file. The rental agency apparently thought it was of some value, of some usefulness, did they not? Isn't that why they wanted it?

Mr. KELLEY. They wanted convictions. I don't know whether they gave arrests also or convictions.

But general intelligence information—and I am speaking of, for example, hoodlum information—that does not go out to the various terminals. That is sent to our intelligence group and then they, having been alerted as to the inquiry, contact the inquirer and say, why do you want this. This is one of the bars that we have for general intelligence type of information.

Senator KENNEDY. Beside the hoodlum, you also have the category of mentals, militants, and activists?

Mr. KELLEY. That is right. Same thing. Mentals, no.

Senator KENNEDY. What do you mean, no?

Mr. KELLEY. Mentals do go on the line. They are not directly channeled upon inquiry to the intelligence unit of our Department.

Senator KENNEDY. Well, if they let out information about mentals, would that be considered violative of any State law?

Mr. KELLEY. This is for the protection of the officer, Senator, and no.

Senator KENNEDY. That wouldn't violate the law?

Mr. KELLEY. No, this is not construed as publication. This is one of the aids to the officer.

Senator KENNEDY. No, I meant if the officer disclosed that information about those that are either categorized as mentals, militants, or activists to a rental agency—and I suppose real estate people want that information to know whether somebody is a good credit risk or whatever—if the officer violated that degree of public confidence or trust or regulations of the Department, he still wouldn't be violating any State law in Kansas?

Mr. KELLEY. Insofar as mentals, there is the same type of careful restrictions placed on them that there are on intelligence subjects. It must be that he has actually been confined or has received care at one of the mental institutions and has shown during some type of a police activity to have been resistive or he has brought harm to himself or to someone else, that type of information has been given but only for the protection of the officers, Senator.

And I suppose were that to be circulated, promiscuously, the officer might be sued.

It is only for the purpose of protection of the officer, however, that it is given; there is no other purpose.

Senator KENNEDY. Have you had any other problems like Lenexa?

Mr. KELLEY. No, sir; I don't know of any other, Senator.

Senator KENNEDY. That has been the only instance that you know of where material has been made available to commercial interests?

Mr. KELLEY. I don't recall any others.

Senator KENNEDY. Do you think that there are sufficient safeguards to make sure that that type of situation doesn't happen again?

Mr. KELLEY. I think we will make all of the efforts we can.

So long as you have people who succumb to entreaties or to money, you conceivably might have a violation of this trust. We do, however,

watch it very carefully and, since it is such a tremendous asset to law enforcement, those who are on the line from other cities are going to be very careful that it remain free of this type of tampering.

Insofar as our Department is concerned, I don't know of any use of computer information that has ever been passed on. We have had a couple of instances where officers have made inquiries in our record bureau and then it turns up in the hands of some employer or prospective employer. In that case severe disciplinary action is taken. But I again don't know of any violation by an officer of our department in the use of the computer.

Senator KENNEDY. You understand, Mr. Kelley, that this situation isn't unique just to law enforcement. A number of insurance companies have this particular kind of a computer. As somebody who is interested in health care, you ought to see what happens to an individual who has that background of illness or sickness in trying to take out an insurance at one company—where another company has this information—and how that information is pooled and how it can travel all over in a matter of seconds to any insurance company in the country without willingness, without the desire and without the knowledge of the individual consumer.

That is a slightly different situation, a different area that raises similar kinds of problems in the question of confidentiality.

Would you want to see the kind of data processing computer information adopted at the national level, at the FBI level, that you've got now available in Kansas City? Would you like to see that whole operation expand nationally and reach out to every city in the country?

Mr. KELLEY. It is in 17 cities now and in the process of being instituted elsewhere. I think that the rules, the procedures, and the general philosophy are very well developed. I would like to see the National Crime Information Center tailored to this type of thing and it is, as a matter of fact, to a considerable extent very helpful.

Senator KENNEDY. Moving into another area, Mr. Kelley, from 1957 to 1961 you were in Birmingham and Memphis and those were the last years before the watershed of 1962 to 1964 when the whole Nation's approach toward the problems of racial discrimination began to change.

And based on your experience in those cities, in those years, can you tell us what some of your own feelings were about the status of black Americans and what you have learned about their feelings of frustration and pressure?

Mr. KELLEY. Yes, I had quite a number of experiences through those years as well as during the 1960's, which gave me a very, very close definition of the problems and the feelings of black Americans, and I think I have achieved thereby a much better understanding.

Many, many instances, there were many instances wherein it became obvious where some of the blacks were suffering from deep depression as a result of the oppression they suffered.

I can recall instances where it was obvious that they felt compelled to engage in some of the demonstrations; there being a reluctance on their part to make a public display of their feelings, but that it was absolutely necessary.

I have seen some who cried as a result of what they termed the indignities to which they were subjected.

So I think that, as a result of those experiences, that I do have a pretty good understanding of the problems. I, not being black, of course cannot have a complete understanding but I do have, I believe, through those experiences, at least a compassionate approach to it.

Senator KENNEDY. Do you feel the FBI could play a useful or helpful or constructive role in some manner in those communities to help alleviate at least some of the misunderstandings or frustrations in the particular area of law enforcement?

Do you feel they could play more of a role?

Mr. KELLEY. I don't know that they could play more of a role, but the FBI has throughout the years been in a position of preeminence as far as law enforcement is concerned and, as to how they conducted themselves, as to how the officers conducted themselves and by good example and by good conduct insofar as dealing with the black community, and by giving the same high caliber service to the black communities as they do to the white communities. I think by doing that they can further to a considerable extent the level of human relations which is within their purview.

Yes, by example they can certainly do a great deal.

Senator KENNEDY. Let me ask you again about the hiring policies of the FBI. Let's take your own department first. There have been a number of newspaper articles and allegations and charges made. We want to give you an opportunity to respond to them. The charges state that blacks are underrepresented in the police department and in the leadership positions within the police department.

This has been an allegation which has been made also of the FBI over the years, and I would be interested in your response to both of those allegations.

Mr. KELLEY. I do not know about the recruitment in the FBI. I can tell you, however, that one of my major concerns throughout the past several years has been to recruit sufficient blacks to have at least an acceptable representation. And some people ask me sometimes how many black officers do you want? I don't know. As a matter of fact, I don't think there should be any distinction so that you would say, since you have a 20 percent population, therefore you should have in Kansas City 260 black officers.

We have 100 black officers. Those 100 officers are among our finest. There is no distinction. We have a promotional system which is geared to fairness and not color.

When I came on the Department, we had a major who was black and who was the only superior officer. He was a very fine man, and as a matter of fact, I made him my administrative assistant after I had been there a while. He thereafter was transferred and was put in charge of the youth and juvenile unit and then later became the chief of detectives and retired while in that capacity. And when I came to the city, we had around 40 other black officers. Out of the 1,300 police we now have 100. We have three captains, several sergeants.

We have representation among the blacks in all of the units of the department. There is no discrimination shown as to assignments and, as a matter of fact, I choose to think—and know of nothing to the contrary—that there is no discrimination on the Department whatsoever.

Senator KENNEDY. You indicated you went from 40 to 100 officers during the time you were in charge of the Department. I suppose one

of the questions which must be considered is how do we, how does the Department, how does the FBI repair defects of apparent discrimination in the past? How do you adjust to those situations?

Mr. KELLEY. We had the same thing in the police department, Senator. There have been on many occasions statements made that there was discrimination. And the only way you can attack this successfully is by performance. And this performance was achieved through the fair recruitment, the fair promotional policy, and the general assignment on the basis of need and skill rather than color.

So it would apply, I am sure, with the FBI also that through performance, by showing that the black agent is just as welcome and is given just as many opportunities as the white agent, I think it will make its own way insofar as stabilizing this situation.

Senator KENNEDY. How many captains do you have?

Mr. KELLEY. Three.

Senator KENNEDY. And then what is the next rank? Does it go down to lieutenant? What is your next lower rank?

Mr. KELLEY. We do not have lieutenants. Sergeants are the next rank.

Senator KENNEDY. I see. How many black sergeants are there in Kansas City?

Mr. KELLEY. Senator, I believe it is——

Senator KENNEDY. Just approximately.

Mr. KELLEY. About eight, I believe, or somewhere along there.

Senator KENNEDY. Eight sergeants and three captains?

Mr. KELLEY. It might be seven, and three captains, yes.

Senator KENNEDY. And what is the next rank then? Is it officer?

Mr. KELLEY. Yes.

Senator KENNEDY. Is there a black person in any of what we would call the 11 supergrades?

Mr. KELLEY. No, sir. A major and lieutenant colonel are the next step.

Senator KENNEDY. That is above officers, you mean? A major is above an officer?

Mr. KELLEY. It is officer, sergeant, captain, major, lieutenant colonel.

Senator KENNEDY. I see.

And do you remember what the number of blacks in any of those categories would be?

Mr. KELLEY. The highest ranking officer is——

Senator KENNEDY. The major?

Mr. KELLEY. Is the captain, and there are three captains. And they have all been made within the last—well, one was made about 3 years ago and the other two are about a year ago vintage or something like that.

Senator KENNEDY. You are, I am sure, sensitive to the concerns of other minority populations as well as far as the recruitment of officers within the FBI like the Spanish-speaking community, and the Indian community as well? Are you going to make an effort to try to at least recruit qualified individuals from those communities and try and make sure that the FBI is representative? Without asking for the exact percentages, are you going to try to do that? Are you going to try to make sure it is representative of the population generally in your recruitment programs?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. And did you make such an effort when you were the chief at Kansas City?

Mr. KELLEY. Yes, sir.

Senator KENNEDY. In another area, Mr. Kelley, I am sure you know that every presidential commission has looked at the gun issue and has strongly recommended strong licensing and registration laws. It has been a majority-minority opinion, but the majority opinion has been uniform in its recommendations.

I am sure you also know that Mr. Hoover was an especially strong advocate of effective gun controls in light of the fact that almost every killing of a policeman in the United States was done with a firearm. Would you review a little bit with us what your own view about gun control is?

Mr. KELLEY. I too am an advocate of effective gun control. Frankly, I have despaired of the efforts to date and am at this point hopeful that we will get at least laws against the circulation of the "Saturday night special." And I appeared before your committee, Senator Bayh, on that.

And if we can just do that, we will have made a tremendous impact on this problem. The Saturday night special is not only cheap, but it is the type of gun which is very dangerous, and dangerous not only to the victim but many times to the subject; to the holder of the gun.

It is the type of gun which makes itself well adapted to crime because it costs so little they can throw it away and feel they have not lost too much.

I am for effective gun control, yes.

Senator KENNEDY. Let's even go beyond the Saturday night special. I think you could even get the Senate of the United States to support that one. That is in no way derogatory to the very splendid work of my colleague and associate here, Senator Bayh, who has really provided very extraordinary leadership and courage and legislative skill in taking this issue on.

We know, though, that that is only about half of the number of guns that come on the market every year. What about the rest of the handguns? What do you want to do about those?

Are we going to make those easily available or are you for either registering or licensing those hand weapons also?

Mr. KELLEY. Yes, sir, I am in favor of any control which again is effective.

Now, I don't believe that you need to go to the point of shoulder weapons, which are the ordinary sporting-type weapon, and I am not desirous of taking away the sporting pistol. I want to have some sort of legislation which makes it difficult for the criminal to get in possession of guns and want some type of legislation so that he will be punished in the event he has it in his possession.

I want to protect the officer because he is out there like a sitting duck and many times it is not a criminal who shoots him but it is in a family disturbance or something of that type, or a person of mental aberration might do that.

Senator KENNEDY. Do you know how many officers were killed last year?

Mr. KELLEY. I don't know exactly.

Senator KENNEDY. 127.

Mr. KELLEY. 127?

Senator BAYH. Would the Senator yield for one observation?

Senator KENNEDY. Yes.

Senator BAYH. Approximately two-thirds of them were killed with Saturday night specials over the last 3 years.

Senator HRUSKA. And the greater part of the remainder were killed by their own guns.

Senator KENNEDY. That is why they probably should not have them.

Can you think of any alternative other than registration or licensing of handguns, so that we are able to control them?

Some have suggested confiscation, but that is obviously unrealistic. In terms of either the registration or licensing though, would you still believe that any weapon, even long guns, ought to be licensed or registered?

Mr. KELLEY. I do not think that long guns, except those prohibited for example by Federal legislation such as the shotgun or the machine-gun—and those are already taken care of—but I think there should be some sort of legislation, yes. I can't outline to you what is going to be done.

In the first place, you have to be realistic about it. We have been trying to get rid of the Saturday night special for years. We haven't done it. I would say, let's get rid of the Saturday night special first and then go on to something else.

I would be well satisfied with just that start.

Senator KENNEDY. Were the guns that were made available to General Turner for demonstration purposes rendered unoperative before they were turned over or do you know?

Mr. KELLEY. I don't know but I am sure that some of them were operative, yes.

I never did see them and I don't know.

Senator KENNEDY. I understand he wanted them for exhibition purposes or demonstration purposes. I was just wondering whether the Department had made them unoperative before they had turned them over to General Turner?

Mr. KELLEY. No, our instruction is to throw them in the steel vats at one of the local plants, and we make no efforts to make them inoperable. We have made no effort, and I'm sure we didn't in this case.

Senator KENNEDY. Finally, Mr. Kelley, in looking at the Watergate matter as a whole, what goes through your mind when you hear about those responsible for lawful wiretaps ordering and authorizing illegal wiretapping, and about those sworn to uphold the law encouraging burglaries, and those mandated to pursue justice who are obstructing justice, and those charged with investigating criminals destroying evidence, and those who are supposed to protect national security using that protection to hide behind it?

What kind of reaction do you have to a climate and atmosphere such as that? You are going to be entering into it, obviously from a very different vantage point. But as you come into this climate and atmosphere how do you feel?

Mr. KELLEY. I feel where there are violations of the law, it is expected of you that, as an officer, you will investigate and prepare to the best of your ability a case for prosecution. And that would be my attitude throughout this.

Senator KENNEDY. Thank you very much.

The CHAIRMAN. Senator Bayh?

Senator BAYH. Thank you, Mr. Chairman.

Chief Kelley, it is good to have you with us. I want to thank you for once again reiterating the strong unequivocal testimony, in response to Senator Kennedy's very thoughtful question about gun control, that the first step is the control of the Saturday night special. We have been fighting for this a long, long time, as you know. You have been one of the expert witnesses, among the many from across the country, whose support made it possible to get this measure passed by the Senate. As one who has been involved in trying to get the Saturday night special bill passed, I know how difficult a task it is.

I appreciate the testimony you have given that this measure is an important first step.

For the record, what do you think of that bumper sticker you see every once in a while, "Guns Don't Kill; People Do"?

Mr. KELLEY. Well, the officer that has been killed would hardly get any comfort out of that.

It is the gun that kills, and the gun of course gives a measure of courage and a great advantage. There have been many deaths that occurred which would not have occurred because of them.

Senator BAYH. Is it possible, Chief, from the perspective of someone who has served in our Federal Bureau of Investigation and been an outstanding Chief of Police in one of our major metropolitan areas, is it possible to enact reasonable firearms controls designed to make it more difficult for the criminal element to have access to the weapons that he or she uses to ply his or her trade and, at the same time, not penalize the sportsmen who have wholesome and lawful reasons for using a weapon?

Mr. KELLEY. It probably will be difficult, Senator.

Senator BAYH. Our bill, as you know very well, would prohibit the sale of Saturday night specials to the public. The Senator from Nebraska has sat many tedious hours through hearings on this issue, and it is a very difficult and controversial area. If indeed we pass legislation through the House and once again in the Senate similar to that which we passed in the Senate last year after some effort, how would that penalize a target shooter, or a hunter?

Mr. KELLEY. It does not.

Senator BAYH. I have never heard of any of those types of sportsmen using a Saturday night special, have you?

Mr. KELLEY. That is right.

Senator BAYH. Chief, I don't want to repeat the questions that have been asked. There are some places I would like to fill in the record, if I may. I think this record ought to contain, before we are through, a general statement of purpose—a charter of conscience or intent—or a definition of goals by the new Director of the FBI as to what the FBI is all about.

Now, as Director of the FBI, what would you like to see the FBI accomplish? What purpose should it serve in our governmental structure?

Mr. KELLEY. I suppose that what I say will be a general philosophical statement as well as what my heart dictates as far as law enforcement is concerned. I have been in this business for 33 years and I have

a deep affection for it. One of the things that disturbs me most about the FBI at this point is the feeling that they are suffering from lack of leadership on a permanent basis and they feel that their position of preeminence, rightfully earned, has been lowered to some extent.

So, insofar as my purpose, one of the major things I hope that I can accomplish is to restore their feeling of confidence in themselves.

I know of no body of men, and women now, and I never did work during the period when they had women, so it may be a little difficult for me to add the women once in a while, and I mean no offense to any of them if I do sometimes exclude them—but these are the finest people I have ever found anywhere other than my own Department.

So I have come to the conclusion that generally within law enforcement there are extremely fine people. I would hope that I could inject into the FBI and law enforcement the general feeling that this is a project in which we are all engaged, that is, the security of the homes, the streets, and the enforcement of the laws and the apprehension of subjects who violate the laws: all in an atmosphere of justice.

This to a considerable extent can be achieved through the leadership of the FBI. This comes about through good training, which they give to the police by virtue of their example, by virtue of their fine performance, and I think above all, by virtue of the tremendous reputation they have for integrity.

And if I can just continue to foster this and to make it a more widespread position throughout law enforcement, then I think that I will have done my job as the Director. And I don't think it is going to take too much within the FBI but there are many things that can be done in law enforcement in general also, and I hope that I can draw all the facets of law enforcement closer together which will make this general goal more easily achieved.

I think that the citizens of this country are entitled to the best. And if it be my job to head the FBI, I will genuinely exert my energies toward this end.

Senator BAYH. You are aware then—and I think it is fair to say this without implication toward your predecessors, either temporary or permanent—that because of some of the circumstances that engulfed the FBI, that there is a rather significant morale problem in the minds of some officers.

I was surprised at first, but after I reflected on it I guess I wasn't so surprised. A month or so ago I was out on the west coast, on an entirely different matter, and I had a rather lengthy conversation with a couple of agents at one of the Bureaus out there. They were really down. I suppose that you recognize that one of the most important jobs you have is to put the fellows on their feet again and instill pride in them that there is a purpose for quality investigative service for the country?

Mr. KELLEY. That is right. I don't feel that the problem of morale is as deep rooted as it might seem because they are real pros, and they are fine people. They won't take too long to get back on their feet. I think.

Senator BAYH. I ran across an article with some very disturbing news. I think this article was printed recently in a journal called

Freedom, which is an independent journal published by the Church of Scientology. I would like to read some excerpts from it to get your general reaction. I do not sit just as a member of the full committee today but also as the chairman of the Senate Juvenile Delinquency Subcommittee, where it has been my responsibility to study in some detail over the last several years the problems of juveniles in the courts.

The dateline of this article was Sacramento. The headline of the article is, "Schoolchildren Records To Be Filed in Federal Criminal Computer." The lead paragraph says:

Is your child in kindergarten this year? Or will you have a child in any of the primary grades over the next few years? If so, there is a chance that, unknown to you, your youngster's name and fingerprints will be placed in a computerized file, alongside the files of rapists, murderers, and thieves.

It goes on to describe the contents of a \$2 million grant to the California Council on Criminal Justice for a program to identify children at a very early age who might ultimately become robbers or rapists or murderers.

The data concerning the behavioral patterns of these children will be cranked into computers. According to this article, there does not have to be a relationship between purely delinquent behavior and the data being put in the computer.

Let me just read excerpts from the article to give you the general feeling of this project. I want to get your opinion how you feel this should be handled—

Beginning in 1975, any police officer or government agency would have instant access to your child's life history, his school grades, his relations with teachers and classroom associates. His file will be kept for the rest of his life and be instantly available if he is ever stopped for a traffic ticket, jaywalking, applies for a government job, or appears as a witness in court.

It goes on further to say:

But the concept of putting the files of some kindergarten children into the computer came out of the Law Enforcement Assistance Administration—and that is all LEAA—which puts money for new techniques of law enforcement into the hands of local authorities.

The California Council on Criminal Justice, comprised largely of men and women in law enforcement, submitted the plan for picking out youngsters in early years of schooling, the "possible killers and robbers of the future."

The computer file will be operated by the Federal Bureau of Investigation.

Then it goes on to say:

The California Council on Criminal Justice doesn't even call its program an identifiable name. It is titled by them as Correctionetics.

You have a rather distinguished reputation for using the computer to make it easier for law enforcement officials to catch criminals. I want your opinion on what this kind of computerization means and where it will lead, and what it means to you and other law enforcement officials in the country?

I do this with the belief that there is a need to deal with juveniles in such a way that they don't become hardened criminals. If you put this behavioral data in the computer where it is permanent, and accessible to any law enforcement officer—and I might say, contrary to the law of most States which require that information relative to juveniles be kept secret—I think this is going to make it more difficult for us to rehabilitate juveniles and keep them from a life of crime.

As a man who's spent most of his life in law enforcement, what do you think about "Correctionetics"?

How would you, as head of the FBI, handle this kind of computerization?

Mr. KELLEY. I have not heard of this particular procedure. I have heard of some of them that are generally classified as preventative. Nobody has ever indicated that this information will be made available whenever a traffic officer makes a citation out.

I don't believe that such information should be made available as a data processing item.

If it is based on the matter of prevention, Senator, I said if it can be shown to be solid insofar as its predication, all right, it can be tried because we must do something if we are going to give aid to the delinquent. But insofar as making the information that is compiled as a basis for a computer data bank, no.

Senator BAYH. I do not fault the effort to try to find which early childhood behavior patterns might predict adolescent misbehavior patterns. We have had ample testimony before our subcommittee to show that a teacher or guidance counselor who is sensitive can pick out some of these problem children early in life and treat them in such a way that their chances of becoming delinquents or criminals are significantly decreased. But to put all of this behavioral information about very young children into a computer so it just spews it out without regard to security or secrecy, that is a matter of some concern to me.

Would it be too much to ask you to check this out when you get down to the FBI, and report back either to this committee or to the chairman of the Juvenile Delinquency Subcommittee on what can be done to keep this thing from getting out of hand?

Mr. KELLEY. Yes, sir.

Senator HRUSKA. Would the gentleman yield?

Senator BAYH. Be glad to yield.

Senator HRUSKA. It is well that Mr. Kelley be requested to explore this subject and commentary. However, it should be noted that such exploration and comment has already been made. An analysis and reply have been made to the article in "Freedom," a journal which is published by the Church of Scientology.

A response to the article has been made by Mr. Robert H. Lawson, executive director of the California Council on Criminal Justice. It is very informative. It sets to rest many misconceptions and apprehensions which have come along.

Mr. Chairman. I ask unanimous consent that a copy of Mr. Lawson's January 30, 1973, statement on this subject be printed in these hearings at this point, and also the April 30, 1973, letter written to Congressman Sisk by Don Santarelli, Administrator of LEAA.

The CHAIRMAN. Without objection it is so ordered.

[Statement and letter follows:]

CALIFORNIA COUNCIL ON CRIMINAL JUSTICE

January 30, 1973.

Robert H. Lawson, executive director of the California Council on Criminal Justice, today issued the following statement concerning a Capitol News Service story written by Orange County radio personality Pat Michaels, entitled, "Big Brother Extends Watchdogging to Kids!"

"There is no doubt that a responsible and free press must continue to inform the people of the workings of their government, particularly when it is thought those workings are detrimental to a free society.

"But it is also incumbent upon government to respond to inaccuracies and misstatements to assure that citizens may be fairly and correctly informed.

"In this case, the truth is simply that the Council on Criminal Justice is not bringing 'big brother' to California, nor does it ever intend to." It is *not* providing any national, or statewide, computer with information about kindergartners.

"The Council has funded a variety of projects to provide more and faster information to law enforcement agencies about criminal activities of persons who are involved with the criminal justice system. But there are safeguards to protect the privacy of citizens and insure the security of the system.

"The Council has *not* 'submitted a plan for picking out youngsters in early years of schooling and the possible killers and robbers of the future.'

"The Council is *not* keeping secret the names of schools 'where the program of watching the kindergartners for aberrational behavior has been instituted.' There is no such program being funded by the Council.

"The Council does *not* have 'a plan to computerize and centralize all juvenile records, including information on psychiatric treatment.'

"The Council has *not* granted funds to the California Crime Technological Research Foundation for 'early detection measuring devices for the propensity of a person to riot or commit a criminal act.'

"There is, however, a measure of truth in the story: the program cited in Orange, San Diego, and Ventura counties are indeed funded by the Council.

"In Orange County, a program entitled 'Behavior Assessment and Treatment Center' is really a probation department program to divert youngsters from the criminal justice system, juvenile hall, and state hospitals. The thrust of the program is to stop the 'revolving door' that is seen too often, to help youngsters break the pattern of repeated brushes with the law.

"In San Diego County, a program entitled 'Simplified Analytical Methods of Behavioral Systemization' is really a probation department program that works with parents who are having problems with their children. The program is entirely voluntary and centers around a series of ten lectures given by a qualified child psychiatrist.

"In Ventura County, a program entitled "A Community-Broad Behavior Modification Program for Pre-Delinquents" is really a home for boys who are truants, runaways, or beyond parental control. Welcome Home, as it is called, is located in Santa Paula and averages from 5 to 7 residents in the 10-17 age group. Again, its purpose is to divert youngsters from the criminal justice system. The primary emphasis is to keep the youngsters in their own community.

"The Council has consistently and repeatedly expressed its deep concern about juvenile delinquency and the need to develop community based programs to prevent it and to divert young people who may otherwise be stigmatized for life. To accomplish this, a number of projects have been funded to assist young people who have been involved with the criminal justice system. This is not a sinister plot; on the contrary, it is in keeping with the recommendations of virtually every knowledgeable person in the field of criminal justice whether from a police, courts, or corrections background.

"Further, rather than operating in a clandestine manner, the Council meets regularly in public sessions. Every grant award is publicized in our monthly Bulletin and summarized in our Annual Report. We welcome opportunities to increase public awareness of our plan, objectives, and funded projects.

"There is room for legitimate differences of opinion about some of our policies and procedures given the complex issue of crime and the variety of solutions well-wishing people espouse. However, such differences should arise from an accurate portrayal of the facts."

APRIL 30, 1973.

Hon. B. F. SISK,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN SISK: This is in response to your recent inquiry on behalf of Ms. Jane Dupras, concerning an article in the *San Francisco Chronicle*.

Regrettably, the Charles McCabe article in the *Chronicle* was apparently based on an unsubstantiated item distributed by the Capitol News of Sacramento. That story charged that the Law Enforcement Assistance Administration was involved

in plans to fingerprint California kindergarten children and to keep school records and other information about them in a computer file.

There is no truth whatsoever in that story. I can assure you that LEAA would never approve such an outrageous idea. It is most unfortunate that several publishers and columnists such as Mr. McCabe were misled by the fabrication contained in the Capitol News Service article. Unfortunately, Mr. McCabe failed to check the facts before publishing his column.

You may be interested to know that the California Council on Criminal Justice, the state agency responsible for the administration of LEAA block grant funds in California, has issued a strong denial of the accusations contained in the Capitol News Service report. The CCCJ statement says specifically that "the Council has not granted funds to the California Crime Technological Research Foundation 'for early detention measuring devices for the propensity of a person to riot or commit a criminal act.'"

Your interest in this matter and the programs of the Law Enforcement Assistance Administration is appreciated.

Sincerely,

DONALD E. SANTARELLI,
Administrator.

Senator HRUSKA. There has been introduced in the Congress a bill treating with this subject. It has been very carefully processed. It is the recommendation of the presidential commission, President Johnson's commission on law enforcement administration, and it differentiates between criminal records, between criminal offenders' record information on the one hand, which consists of the formal entry into the computer system of facts, of records pertaining to anyone who has been accused or has been convicted of a crime and so on: it discriminates between that type of information and criminal intelligence information.

The bill, if you follow its tenor, covers all of the points of objection suggested by the Senator from Indiana and many more. It provides for limited access to covered data systems and only the law enforcement agencies, the police courts, corrections, will have direct access. An individual will have access to his own record upon request so that he may inspect it and see whether there are any wrongful or erroneous entries and then each individual record is purged from the active file after the passage of a sufficient period of time to indicate that the individual is no longer active in the criminal justice system.

So that it is not a matter of putting a college prank of taking charge of a streetcar and marching it up and down Main Street and getting one's name on the blotter and carrying that along with him until 60 years later; there is not that kind of persecution; there is not that kind of setup in it.

All those precautions were the basis of the \$2 million grant to the California State department and it is considered one of the more enlightened of the efforts to attack this problem of security and privacy of information in the justice information system.

In it are found provisions making it a penalty punishable very severely for unauthorized use and transgression upon these records, particularly the intelligence information. Such must be protected because there could be information, for example, of some gambler who might be under surveillance as a part of an organized crime piece of machinery and so if that was disclosed, of course the purpose of the surveillance would be frustrated.

So, this problem has been thought of and has been the subject of a great deal of active discussion. We hope sometimes it will merit the attention of this committee.

Therefore, I commend S. 2546 of the 92d Congress to the nominee and also to all members of this committee.

I happen to be the introducer of this bill, although not its author. It is a very meritorious piece of legislation and will go far in combating crime without creating the big brother type system. With its safeguards there will be no chance that somebody who overparks sometime will appear on the record when he applies for a job as a book-keeper or automobile mechanic or whatever. That won't.

And I thank the Senator for the opportunity to put this into the record. I would like to suggest that the bill and a statement given it at time of introduction go in this hearing together with a comment on it.

The CHAIRMAN. It will be inserted in the record.

[S. 2546 and statement follows.]

[From the Congressional Record, Sept. 20, 1971]

By Mr. HRUSKA:

S. 2456. A bill to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems. Referred to the Committee on the Judiciary.

Mr. HRUSKA. Mr. President, I introduce today a bill which confronts Congress with the important issue of how law enforcement agencies—Federal, State, and local—can maintain and disseminate necessary information on criminal offenders and still protect the privacy rights of the individuals concerned.

This has become an increasingly more critical issue in the computer age, as the hearings held early this year by the Subcommittee on Constitutional Rights amply demonstrated. The problem was stated succinctly by the President's Commission on Law Enforcement and Administration of Justice, as follows:

"The importance of having complete and timely information about crimes and offenders available at the right place and the right time has been demonstrated throughout this chapter and, indeed, throughout this report. With timely information, a police officer could know that he should hold an arrested shoplifter for having committed armed robbery elsewhere. With a more detailed background on how certain kinds of offenders respond to correctional treatment, a judge could more intelligently sentence a second offender. With better projections of next year's workload, a State budget office would know whether and where to budget for additional parole officers.

"Modern information technology now permits a massive assault on these problems at a level never before conceivable. Computers have been used to solve related problems in such diverse fields as continental air defense, production scheduling, airline reservations, and corporate management. Modern computer and communications technology permits many users, each sitting in his own office, to have immediate remote access to large computer-based, central data banks. Each user can add information to a central file to be shared by the others. Access can be restricted so that only specified users can get certain information.

"The most delicate part of any criminal justice information system is the record of previously arrested people and accompanying information about them. Such information is valuable in making prosecution, sentencing, and correctional decisions. But whenever government records contain derogatory personal information, they create serious public policy problems:

"The record may contain incomplete or incorrect information.

"The information may fall into the wrong hands and be used to intimidate or embarrass.

"The information may be retained long after it has lost its usefulness and serves only to harass ex-offenders, or its mere existence may diminish an offender's belief in the possibility of redemption.

"Heretofore, the inherent inefficiencies of manual files containing millions of names have provided a built-in protection. Accessibility will be greatly enhanced by putting the files in a computer, so that the protection afforded by inefficiency will diminish, and special attention must be directed at protecting privacy. However, the new technology can create both more useful information and greater individual protection."

Since the issuance of the Crime Commission's report in 1967, a great deal of study has been given to the security and privacy aspects of criminal justice infor-

mation systems. The Law Enforcement Assistance Administration, created by the Omnibus Crime Control and Safe Streets Act of 1968, soon originated as Project SEARCH—System for Electronic Analysis and Retrieval of Criminal Histories—a prototype, computerized system for the exchange of criminal history information among the States. In December 1970, having successfully demonstrated the prototype, Project SEARCH was turned over to the FBI for development of an operational system to be part of the National Crime Information System. One of the crucial decisions required to be made by the SEARCH project group was how to deal with the security and privacy problem. The recommendations of that group, which was composed of distinguished members of the law enforcement and data processing communities, contributed significantly to the development of the legislation I now introduce.

In the course of the consideration in the Senate of the proposed Omnibus Crime Control Act of 1970, an amendment was added to that legislation by the Committee on the Judiciary, to require the Law Enforcement Assistance Administration to submit legislative recommendations to promote the integrity and accuracy of criminal justice data collection. Popularly known as the Mathias amendment, for its author, our colleague from Maryland, the provision was subsequently amended in conference to make clear that the legislative recommendations should assist in the purposes of the law enforcement assistant program.

The bill which I introduce is Attorney General Mitchell's response to the legislative mandate of the 1970 act.

The significant features are:

Provide for stringent controls over the security of criminal justice data systems, including that they be used only for law enforcement purposes and under the management control of law enforcement agencies. In order to permit State and local agencies which cannot now meet these requirements to participate in a system, the Attorney General is authorized to grant waivers in proper cases.

Provides for limited access to covered data systems. Only law enforcement agencies—police, courts, corrections—will have direct access. Further dissemination of information must be necessary to the enforcement of a specific law and approved by the Attorney General.

Authorizes an individual to have access to his record so that he may ensure that it is accurate and complete.

Requires operating procedures to assure that each individual's record is purged from the active files after the passage of a sufficient period of time to indicate that the individual is no longer active in the criminal justice system—that is, deceased or rehabilitated.

Provides for civil and criminal penalties for the willful dissemination or use of criminal justice information in violation of the provisions of the bill.

Authorizes the Attorney General to prescribe regulations to carry out the provisions of the bill.

Mr. President, the issues formed by this bill are deserving of the serious and prompt consideration of the Senate. I urge my colleagues to join with me in according it that consideration.

I ask unanimous consent that the Attorney General's letter transmitting the legislation, the bill, and a section-by-section analysis be printed in the Record. I ask that the bill be appropriately referred.

There being no objection, the material was ordered to be printed in the Record, as follows:

S. 2546

A bill to facilitate and regulate the exchange of criminal justice information and to insure the security and privacy of criminal justice information systems

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Criminal Justice Information Systems Security and Privacy Act of 1971."

DEFINITIONS

SEC. 2. For the purposes of this Act—

(1) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements and organizations thereof, funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing or dissemination of criminal offender record information or criminal intelligence information.

(2) "criminal offender record information" means records and related data, contained in a criminal justice information system, compiled by law enforcement agencies for purposes of identifying criminal offenders and alleged offenders and maintaining as to such persons summaries of arrests, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation and release.

(3) "criminal intelligence information" means investigatory information, including reports of informants and investigators, in matters pertaining to law enforcement, contained in a criminal justice information system and indexed under an individual's name, or retrievable by reference to an individual by name or otherwise. The term does not include information from the news media or other sources accessible to the public.

(4) "criminal justice information" includes criminal offender record information and criminal intelligence information.

(5) "Law enforcement" means any activity pertaining to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to police efforts to prevent, control or reduce crime or to apprehend criminals, activities of corrections, probation or parole authorities.

(6) "law enforcement agency" means a public agency which performs as its principal function activities pertaining to law enforcement.

ACCESS AND USE

SEC. 3. (a) Except as provided in subsections (b) and (c) of this section, access to criminal justice information systems shall be available only to law enforcement agencies. Criminal justice information may be used only for law enforcement purposes or for such additional lawful purposes necessary to the proper enforcement or administration of other provisions of law as the Attorney General may prescribe by regulations issued under section 6.

(b) Criminal justice information may be made available to qualified persons for research related to law enforcement under regulations established by the Attorney General. Such regulations shall establish procedures to assure the security of the information released and the privacy of individuals about whom information is released.

(c) An individual who believes that criminal offender record information concerning him is inaccurate, incomplete, or maintained in violation of this Act shall, upon satisfactory verification of his identity, and in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

SECURITY, UPDATING AND PURGING

SEC. 4. Criminal justice information systems shall—

(a) Unless exempted under regulations prescribed under section 6, be dedicated to law enforcement purposes and be under the management control of a law enforcement agency;

(b) include operating procedures reasonably designed to assure the security of the information contained in the system from unauthorized disclosure, and to assure that criminal offender record information in the system is regularly and accurately revised to include subsequently furnished information; and

(c) include operating procedures designed to assure that criminal offender record information concerning an individual is removed from the active records, based on considerations of age, nature of the record and a reasonable interval following the last entry of information indicating that the individual is still under the jurisdiction of a law enforcement agency.

(d) notwithstanding any provision of section 3 or of this section, or of any rule, regulation, or procedure promulgated pursuant thereto, any criminal justice information pertaining to juvenile delinquents which is maintained as part of a criminal justice information system shall be afforded, at least, the same protection and shall be subject to the same procedural safeguards for the benefit of the individual with respect to whom the information is maintained, in matters relating to access, use, security, updating, and purging, as it would be if it were not maintained as part of such system.

CIVIL AND CRIMINAL REMEDIES

SEC. 5. (a) A person with respect to whom criminal justice information willfully has been maintained, disseminated or used in violation of this Act shall have a civil cause of action against the person responsible for such violation and shall be entitled to recover from such person actual damages and reasonable attorney's fees and other litigation costs reasonably incurred.

(b) Whoever willfully disseminates or uses criminal justice information knowing such dissemination or use to be in violation of this Act shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

(c) No public official or agency shall be subject to any civil or criminal penalty under this section for the dissemination or use of information obtained or derived from sources accessible to the public.

(d) A good faith reliance upon the provisions of this Act or of applicable law governing maintenance dissemination or use of criminal justice information, or upon rules, regulations or procedures prescribed thereunder shall constitute a complete defense to a civil or criminal action brought under this Act.

REGULATIONS

SEC. 6. The Attorney General is authorized, after appropriate consultation with representatives of State and local law enforcement agencies participating in information systems covered by this Act, to establish such rules, regulations and procedures as he may deem necessary to effectuate the provisions of this Act.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., September 20, 1971.

The VICE PRESIDENT,
U.S. Senate,
Washington, D.C.

DEAR MR. VICE PRESIDENT: Enclosed for your consideration and appropriate reference is a legislative proposal entitled, "Criminal Justice Information Systems Security and Privacy Act of 1971." This proposal is in response to the Congressional mandate in section 7 of the Omnibus Crime Control Act of 1970 that the Law Enforcement Assistance Administration of this Department submit to the President and to the Congress recommendations for legislation to assist in the purposes of title I of the Omnibus Crime Control and Safe Streets Act of 1968 with respect to promoting the integrity and accuracy of criminal justice data collection, processing and dissemination systems funded in whole or in part by the Federal Government, and protecting the constitutional rights of all persons covered or affected by such systems. Also enclosed is a section-by-section analysis of the proposal.

The draft bill provides for stringent controls over the security of and access to criminal justice information systems, contains appropriate provisions for updating of information in them, for purging of outdated information, and for allowing individuals to have access to criminal history records concerning them, in order to insure that they are accurate and complete.

The draft bill also provides civil and criminal remedies against those who violate its provisions by unlawful dissemination or use of criminal justice information and authorizes the Attorney General to prescribe regulations to effectuate its provisions.

The proposed legislation would, I believe, protect the constitutional rights of persons affected by the collection and dissemination of criminal justice information, while at the same time ensuring that the legitimate needs of law enforcement authorities for complete and accurate information may be satisfied. Its early and favorable consideration is urged.

The Office of Management and Budget has advised that enactment of this proposed legislation would be consistent with the Program of the President.

Sincerely,

JOHN N. MITCHELL,
Attorney General.

SECTION-BY-SECTION ANALYSIS

Sec. 1 is the enactment and title clause.

Sec. 2. Definitions.

(1) "Criminal justice information system" is defined to include those systems for the collection, processing or dissemination of criminal justice information that are funded in whole or in part by the Law Enforcement Assistance Administration. Any system receiving LEAA support would be subject to the Act in its entirety, including any Federal participation. With respect to the term "equipment" in section 2(1), whenever equipment, such as central computer facilities, is shared with non-criminal justice systems, the term includes only those portions of the shared equipment which are used in the criminal justice system.

(2) "Criminal offender record information" is defined to include records of arrests and dispositions of criminal offenders. This information would include data necessary to identify individual offenders and provide a complete history of their involvement with the criminal justice system including arrest, arraignment, trial detention, parole and release. Intelligence and investigative reports are not included in "criminal offender record information".

(3) "Criminal intelligence information" includes investigatory information related to law enforcement and indexed or retrievable by individual name. Information from public sources is excluded so as to avoid the imposition of the Act's civil and criminal penalties for the dissemination or use of information that could be obtained from the newspapers or other public sources.

(4) "Criminal justice information" includes both criminal offender record information and criminal intelligence information.

(5) The definition of "law enforcement" is taken from section 601(a) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(6) "Law enforcement agency" includes only agencies that are principally engaged in law enforcement activities. This would include police forces, responsible for enforcement of the general criminal law, prosecutorial agencies, courts with criminal jurisdiction, correction departments (including probation), parole commissions, and governmental agencies that are engaged principally in the collection and provision of criminal justice information. The definition would exclude railroad police, harbor police and other agencies that are not principally concerned with enforcing general criminal laws although they may have some limited law enforcement responsibilities.

Sec. 3. Access and Use.

Subsection (a) provides that only law enforcement agencies shall have direct access to systems covered by the Act and that information obtained from the system may be used only for law enforcement purposes or additional lawful purposes prescribed by the Attorney General by regulation. It is intended that agencies that use criminal justice information for valid non-law enforcement purposes, as for example, counterintelligence, personnel suitability, or security, may continue to do so, but they must obtain the information through a law enforcement agency.

Subsection (b) permits secondary dissemination for research purposes, under regulations prescribed by the Attorney General. Such regulations must establish procedures to assure data security and to protect individual privacy.

Subsection (c) permits an individual to review and copy his criminal offender record file upon proof of identity and compliance with published rules concerning time, place, fees and the like. This right to individual access does not apply to criminal intelligence information.

Sec. 4. Security, Updating and Purging.

Subsection (a) provides that all covered systems shall, unless exempted by regulations, be used only for law enforcement purposes and be under the management control of a law enforcement agency. This is designed to prevent commingling with non-law enforcement data and to reduce the possibility of unauthorized disclosure. To be "dedicated" to law enforcement, an information system, including all equipment and facilities, must be limited to the function of serving the criminal justice community and fully independent of non-criminal justice information systems. "Management control" means the authority to set and enforce policy concerning system operation and use, including the authority to employ and discharge personnel engaged in operating the system.

It is recognized that many State and local law enforcement agencies that may wish to participate in a covered system cannot now provide system facilities, such as computers and related equipment and facilities, that are dedicated solely to law enforcement purposes. The bill therefore permits the Attorney General to prescribe regulations exempting such agencies from this requirement.

Subsection (b) requires system procedures designed to minimize unauthorized disclosure and to assure regular and accurate updating of offender record information.

Subsection (c) is designed to assure that offender record information is removed from the active records after the passage of a sufficient period of time to indicate that the individual is no longer active in the criminal justice system—that is, deceased or rehabilitated. It would also assure that record information which is required by Federal or State law to have limited accessibility, such as on juvenile defenders, is maintained separately or is removed from the active records. Purged information would be available only to agencies having a specific need for it based on statute. An example of statutory need is found in the provisions of the Gun Control Act of 1968, under which a prior felony conviction, however remote, is the basis for criminal violations. See e.g., 18 U.S.C. 922(g) (1).

Subsection (d) is designed to insure that existing State statutes limiting access to and use of records of juvenile offenders are not superseded by this legislation.

Sec. 5. Civil and Criminal Penalties.

Subsection (a) provides for civil damages for willful unauthorized maintenance, disclosure or use of criminal justice information, either offender record information or intelligence information.

Subsection (b) provides criminal penalties of one year in jail or \$1,000 fine, or both, for willful and knowing violations of the Act.

Subsection (c) provides that public officials and agencies shall not be subject to penalties for the dissemination or use of information that could be obtained from public sources. The purpose of this provision is to avoid the imposition of penalties for dissemination or use of information that is not in any way confidential, sensitive or peculiar to a covered system, but which could be easily obtained from public sources by anyone desiring it.

Subsection (d) provides a complete defense against any civil or criminal action for any law enforcement officer acting pursuant to the Act or applicable State laws, or to regulations issued thereunder. Thus, an officer could not incur a penalty for a disclosure or use of information in the course of performing his duties in good faith reliance upon rules or procedures adopted by his agency under the Act or laws and regulations thereunder.

Sec. 6. Regulations. This section authorizes the Attorney General to establish rules, regulations and procedures to implement the Act, after consultation with appropriate persons. Such regulations could cover such matters as the content of criminal offender record files (excluded offenses, data elements and format, for example), controls on the use of criminal intelligence information, the use of criminal justice information for other than law enforcement purposes, the use of such information for research purposes, procedures for granting access to individuals to examine and copy their criminal offender record files (including procedures for verification of identity), and exemption of participating agencies from the requirement that system equipment must be dedicated exclusively to law enforcement purposes. It is contemplated that in appropriate cases a partition or segment of a centralized computer will be permitted to be dedicated to a criminal justice system, provided that the personnel responsible for the use of the partition or segment are under the management control of a law enforcement agency.

Senator BAYH. I'm familiar with the bill, and I am glad to yield to the Senator from Nebraska. I know of your long interest in the area of juvenile delinquency.

The measure which you refer to has not been enacted into law, hasn't even been reported out of the committee yet——

Senator HRUSKA. That is right.

Senator BAYH. So that it can hardly be the reason the California Council on Criminal Justice received this grant.

Senator HRUSKA. It is the objective of the grant to prove, in an experimental research way, the feasibility of setting up these safeguards,

of setting up the records in such a way that they may work as is provided in the bill. We cannot legislate in a vacuum, as you know. That is most difficult. We have too many laws of that type right now. We don't want to add to that type of measure.

Senator BAYH. I'm sure there will be no vacuum with this grant! Has my friend from Nebraska had a chance to read the criteria for the \$2 million grant?

Senator HRUSKA. I have read a number of those. I don't know if I have read these particular specifications. But I have already requested that a statement on it be printed in these hearings. It speaks for itself.

Senator BAYH. The ones involved in the grant to which I referred?

The CHAIRMAN. Gentlemen, we are getting far afield here.

Senator HRUSKA. That is strange.

Senator BAYH. That is really unusual.

The CHAIRMAN. The nominee says he has studied the question and made a note to look into it.

Senator BAYH. I hope that when he studies it, he will find out that the protections that my friend from Nebraska has mentioned are contained in the grant.

I know from past experience not to believe everything I hear, particularly when it is not written by some of the distinguished members of the press who are here today.

But this is hardly the kind of protection that my friend from Nebraska has in mind.

The article goes on to say that the parents aren't even advised when their children are chosen, and that when a police officer stops somebody and says they are driving a questionable car, that goes through the "correctionetics" system.

Immediately the answer will come back to the officer that the boy is labeled a predelinquent.

I am sure we don't want that. And I think if Chief Kelley will find out about this, it will lay to rest some of my concerns. What we need, if I may say to my friend from Nebraska, is not the ability to computerize this so that somebody from Kansas City can tell what a kid from Nebraska or Indiana or Terre Haute or Indianapolis is doing. Rather, we need to have more attention in the school system of Indianapolis and Terre Haute so that the teachers and parents and community people and church leaders know what the kids are doing in their own homes without worrying about what is happening half a country away. But that is just the philosophy of a Senator from Indiana.

Senator HRUSKA. And when they venture into this neighboring town, we would like to know why they are there and if they are bent on mischief of a criminal character.

Senator BAYH. Chief, could you tell us what you know about the compilation of congressional dossiers? Are there any, and if so, where are they?

Mr. KELLEY. Senator, I don't know a thing about them, I have never seen one and I know nothing about it whatsoever.

Senator BAYH. Would it be too much to put that on your list there under "correctionetics" and find out if there are any down there and, if so, what criteria is being used and how we get them destroyed?

We understand from your acting predecessor that there were some,

but for some reason or another there wasn't any authority to destroy the darned things.

And as I said in our private conversations, this problem with the congressional dossiers came up but I am not any more concerned about congressional dossiers than I am about the widespread collection of information on people who have never had the good fortune to be in the United States Senate. I do think inasmuch as it has been raised, it would be helpful for us to see if this kind of practice is going on, if this information is being stored, and if so, then why. I would be interested in your recommendations as to whether or not there is any validity behind this and how we destroy the darned things if there is no reasonable purpose for keeping such.

Mr. KELLEY. I will look into it as soon as I have that position; yes.

Senator BAYH. As soon as you have the position?

In listening to Senator Kennedy's discussion with you relative to minority groups, Spanish-speaking Americans, black citizens, Indian citizens, there was one area that I don't think was touched on primarily because it was not involving a minority group, but I would like to know what you envision the role of women to be in the FBI under your directorship?

Mr. KELLEY. I can only say that in the Kansas City Police Department, they do the same jobs and have the same assignments as men. They go right out into the patrol cars. We have a field sergeant who is a woman, and a black woman, by the way.

Senator BAYH. Do you envision perhaps lowering of the bars—is not a good word for it, not good terminology for it—but do you envision, shall we say, an expansion of the utilization of women, who might serve as agents or in other capacities in the Federal Bureau of Investigation. Would this be one goal you have as the new Director?

Mr. KELLEY. I don't know of any restrictions but my response would be they would go into the same assignments that a man has.

Senator BAYH. I don't know of any restrictions either. I have never examined the criteria involved.

Could you tell us how many women agents there are in the FBI, since there are no restrictions?

Mr. KELLEY. No, sir, I don't know how many there are.

Senator BAYH. Is it fair to say not as many women as there are blacks on the Kansas City Police Department; isn't that fair to say?

Mr. KELLEY. There are 100 black officers. I don't believe there are that many women agents.

Senator BAYH. You will consider this possibility to utilize the talents. I don't believe in a quota system and this kind of thing but if there are places where women agents can serve the Bureau, it does seem to me they ought to be permitted the opportunity to serve and the Bureau should take advantage of their expertise and their dedication.

Mr. KELLEY. Yes, sir.

Senator BAYH. Now, let me throw a couple of other areas out that are rather controversial and I bring them to your attention really as much to give you a chance to put the record straight and to respond, and to make it unequivocally clear what your position as the Director will be and what the position of the FBI will be. Before going any further, I want to preface my question with the assessment that in my judgment, the questions are directed at a small number of individuals and

they are not symbolic of an entire police force or policemen or policewomen in general but, in my judgment, and hopefully I am right—they are the acts or responses of the few that tend to bring discredit on a large number of officers and officials. But this has been brought out and it has been made a matter of public record and I would like for our record to contain your opportunity to respond if you care to do so and——

Senator THURMOND. Would the distinguished Senator yield for about 1 minute or 1½ minutes, for a very brief statement, and then I can get back to another committee.

Senator BAYH. Yes, I will be glad to yield for a minute or 1½ minutes to my friend from South Carolina.

Senator THURMOND. Mr. Chairman, I have no questions to propound to Chief Kelley. I have known him for a number of years. I was in Miami, Fla., in 1970, when he was presented the J. Edgar Hoover Gold Medal Award for the outstanding chief of police in the Nation. I have heard others speak about his excellent work. I have had his record investigated thoroughly and I am convinced that he will make an excellent Director of the FBI.

When one looks at Chief Kelley, he looks like an exemplary police officer and he acts like an exemplary police officer, and his record as Chief of Police in Kansas City, Mo., is one of an exemplary police officer.

I think the President is to be commended upon selecting this fine gentleman to head this position and he is the type of officer I would like to see on the police forces and in the law enforcement agencies as much as possible throughout the Nation.

He received a degree from college in 1936. He received a law degree in 1940 and immediately went to work for the FBI for 21 years and then he went to his present position and has been there since. It is a record of able, dedicated and faithful service. I want to congratulate him upon his appointment and I feel our Nation is very fortunate to have a man like him as Director of the FBI.

Mr. KELLEY. Thank you, Senator.

Senator THURMOND. Thank you very much for yielding to me, Senator Bayh.

Senator HRUSKA. Would the Senator yield for an insert on behalf of Senator Dole of Kansas? It is a statement on his part, endorsing the nomination of Chief Kelley.

The CHAIRMAN. It will be admitted.

[The statement of Senator Dole in full follows:]

PREPARED STATEMENT OF SENATOR ROBERT DOLE FROM KANSAS, JUNE 19, 1973

Mr. Chairman, I wish to take this opportunity to express my wholehearted support for President Nixon's nomination of Clarence M. Kelley to be Director of the Federal Bureau of Investigation.

Having served with great distinction in the FBI, he knows the Bureau, and the basics of law enforcement on a personnel level. He understands the FBI's responsibility, its mission and its history. In addition, he has gained broad administrative experience as the police chief of one of our major cities. Since coming to Kansas City, Missouri, he has demonstrated an impressive capacity to respond to changes and has built a national reputation for his use of the tools of modern police science and technology.

Chief Kelley's integrity is above question. His professional qualifications are of the highest caliber. I believe he will bring to his new position the highest

determination to continue the outstanding record of service and achievement which has characterized the FBI over the years.

Chief Kelley has roots in the State of Kansas. He is an alumnus of the University of Kansas and as Chief of the Kansas City Police Department he has worked closely with Kansas law enforcement officials, gaining their respect and confidence. I am pleased to support his nomination.

Senator THURMOND. Mr. Chairman, if I happen not to be here at the time the vote occurs on this gentleman, I hope—well, I would like for my proxy to be cast by the ranking member. Senator Hruska, for the nominee.

The CHAIRMAN. You can't vote proxy. You refer it to the committee. Proceed.

Senator BAYH. Mr. Kelley, there have been some news stories which have been—and I suppose critical is the way to describe it—about the way in which you have responded to those incidents in Kansas City where police brutality is involved.

As I said a moment ago, I think this represents the reaction or action of a minority of our police officials, but because of the impact it has on society, generally, I think it is important to deal with it. I think you can deal with it in such a way that it is not embarrassing to you.

Could you tell the committee how you respond to these allegations? Is there any accuracy in them? What are your thoughts about how one should respond in the event of police brutality?

Mr. KELLEY. I can tell you how I think you should not respond: that is, to become immediately defensive. And I don't think that has been the practice of our department, nor of me.

In our department the allegation of brutality is handled in a very formal manner. In the first place, it is filed in many places throughout the city and in the department and in order to facilitate the filing and the handling of complaints, we have established what is known as the Office of Citizens Complaints. This is an office divorced from the police department and headed by a minister who has had considerable experience in the field of human relations and who has a black man as one of his assistants and a second assistant who is a white man. They process the complaint. It is then investigated by an internal affairs unit, brought back to them, and up until about 2 months ago they made an assessment of the blame; whether it be on the officer or whether it not be on the officer and then if they thought it was the officer's fault, they made a recommendation to penalize. This then came to me. I had the final authority.

Insofar as the discipline in the great majority of cases, I agreed with that assessed by the Office of Citizen Complaints. It was then passed on to a board of police commissioners and they reviewed it and if the citizen was still dissatisfied he could appeal it to the board of police commissioners.

If the penalty assessed was a 14-day suspension or more, the officer could appeal that. And it is a very fine system, I think. I don't think, however, any system is perfect and there might well be some who will say that not only the system is wrong but it is charged with a great deal of coverup: a great deal of effort is made to cover up brutality.

But there is absolutely none that I know of. Every one of the complaints has been processed completely.

Senator, if I am to answer a charge such as this, of course, there must be specifics, but as a generalization, I do not feel that brutality where it existed has been condoned nor has it been overlooked nor have we become defensive about it.

Senator BAYH. Nor should it be condoned.

Mr. KELLEY. Nor should it be condoned.

Senator BAYH. That is, I think, a very good general statement. Let me be specific because this is another matter that has been printed in a couple of stories I have seen and I think you deserve the right to comment on it, and I, personally, would like to get your response.

I have here a copy of a document from the Community Relations Service of the Department of Justice dated April 27, 1972, from the field representative of the Kansas City Division. The report is entitled: "1972 Summer Tension Report".

I will read the final conclusion of this report, chief, and then ask you to comment on it. It says that there is:

A lack of visible willingness on the part of the Kansas City Police Department either to penalize officers appropriately, officers who have apparently brutalized minority citizens or to require positive results from efforts to recruit minority police officers. There have been several incidents in the last two years of perceived severe police brutality against minority citizens; no meaningful efforts have been made by the Kansas City Police Department to show the public that the Kansas City Police Department will not tolerate excessive use of force by its officers.

I realize that is an awfully harsh statement. If this fellow, this Lee Henson, who is the Kansas City, Mo., field representative, was he out to get you? Was there some misunderstanding there? Was the record not complete that was made available to Mr. Henson or how could something like that surface?

Mr. KELLEY. I certainly do not know. Mr. Henson, along with a police committee of the City Human Relations Commission, came to my office once each month to talk over problems in the human relations field and a great deal of time was spent on individual cases. He heard discussions of those cases, undoubtedly. I don't know what he is talking about.

I don't agree with statements such as we made no efforts—I don't remember what exactly his phraseology was—but no effort to advise the public and to attack this problem. I think, on the other hand, there are numerous instances where we have taken definite steps in an effort to remove from our department those who may be brutalizing or otherwise causing difficulties.

We have, for example, among some projects that we are now studying an action review panel. That is a review panel where officers call in one of their fellow officers they feel may be becoming a little too aggressive. Perhaps there are too many resisting arrest cases filed by him or there are too many complaints filed against him. And they will call him in and they will counsel and advise him, and they will take sufficient time so that they will make indelible in his memory the fact that they know what his problem is and they are telling him what he should do to curb his problem. It is entirely a voluntary program and the aegis of the department, with the financial support of the Police Foundation, which is a subsidiary of the Ford Foundation. We are making an evaluation of this and it will go completely, I am sure.

throughout the department as a general practice. So we have done many things like that.

I don't know what Mr. Henson is talking about though.

Senator BAYH. Would you supply us for the record, Chief, with a synopsis of the way in which allegations of police brutality have been handled by the Kansas City Police Department officials?

Mr. KELLEY. I would be happy to.

Senator BAYH. And specific examples of officers, if any, who have been discharged because of this type of activity as well as public reports from the press showing this type of sanction?

And I don't know Mr. Henson, either, All I have is this article and I do appreciate your responding to it.

Mr. Chairman. I would like to put in the record at the appropriate time this article I referred to a moment ago, so that anyone who wants to read it can read it in total.

Senator HART. Without objection.

[The memorandum from the Community Relations Service of the Department of Justice follows:]

MEMORANDUM, COMMUNITY RELATIONS SERVICE, DEPARTMENT OF JUSTICE

April 27, 1972.

To: Ben Holman, Director.

From: Lee Henson, Kansas City (Mo.) field representative.

Subject: Kansas City, Mo., 1972 summer tension report.

This is in response to your memo of April 20, 1972. This report refers to only one potential crisis area.

There have been no substantive institutional changes in Kansas City since May of 1971, when I last submitted a summer tension report to you. Therefore there have been no substantive community/institutional relations changes for the better or worse. Tensions remain about the same. There is no particular reason to believe or disbelieve that racial tensions will flare into violence here this summer.

The "Outline Format" which you attached to your instructions for submission of this report intimates that tensions cited by the reporter ought to be tied to recommendations for feasible short-range methods of reducing the tensions. Thus this report does not list all major institutional practices which have a visibly discriminatory effect and which cause racial tensions. Such practices in Kansas City are identical to practices in other major U.S. cities and have been catalogued in a variety of widely-circulated reports and studies. Attached for reference is an excerpt from a report issued by the city human relations commission in October of 1971. The excerpt is a portion of the report's summary. The report is an assessment of the extent to which issues of concern to minority citizens in Kansas City in April of 1968 (at which time a major civil disorder took place here) have been positively resolved since that time. The report, in substance, asserts that positive changes initiated locally and without the impetus of Federal program funds have been virtually non-existent. In my judgment, this is a reasonably accurate assertion and remains valid as of this writing.

Specific major tensions capable of being reduced through feasible short-term steps, and those steps recommended, are as follows:

Relative to administration of justice:

Tension: lack of visible willingness on the part of the Kansas City Police Department (KCPD) either to penalize appropriately officers who have apparently brutalized minority citizens or to require positive results from efforts to recruit minority police officers. There have been several incidents in the last two years of perceived severe police brutality against minority citizens; no meaningful efforts have been made by the KCPD to show the public that the KCPD will not tolerate excessive use of force by its officers; indeed, the Chairman of the Board of Police Commissioners, in a recent public statement, suggested that he would support officers who use excessive force (on the ground that the offender "initiated" the incident which caused the force to be used). The officer force of KCPD is about 7% minority; the population of the city is about 23% minority.

Recommendation: that the responses of the CRD and Civil Rights Compliance office of the Department of Justice to a recent written request to the Department from the Coalition of Concerned Citizens, a broad-based minority community organization with primary interest in administration of justice issues, for assistance in dealing with these situations, be if not publicized at least readily visible in the minority community and to the KCPD, so that the confidence of the minority community in its ability to effect positive changes in police/community relations can be enhanced.

Tension: the likelihood of rekindling of hostilities between Chicano residents of the inner-city areas of Kansas City, Mo., and Kansas City, Kansas, and, on the other hand, the police departments of the two cities, due to a wide-spread belief in the Chicano community that police officers, during the summer months, arbitrarily stop and frisk persons who "look Mexican" in hopes of apprehending Mexican nationals unlawfully in the United States. The U.S. Immigration and Naturalization Service (INS) apparently pays what amounts to a bounty to persons who apprehend or help to apprehend unregistered aliens.

Recommendation: that INS be sensitized on the national level to the tensions caused by this relationship between INS and local law enforcement officials so that INS can be encouraged to restrict or withdraw from the relationship. Certainly the relationship ought not to be financially profitable (either overtly or, through violation of police department regulations by individual officers, covertly) to individual officers or to police departments. Instructions might then be issued to CRS personnel in cities and states with substantial Spanish-descent populations to institute a follow-up local sensitization process on the state and local level.

Senator HART. If the Senator would permit an observation?

That report, the excerpt from which the Senator has just read, has been made by a Department of Justice person. And all of us now being on notice, I would think it our obligation, in fairness to Mr. Kelley and to the committee and to the community, to request that person to come in and make an explanation.

As Senator Bayh said, that is a harsh statement, and I don't think we ought to let it stand.

Senator BAYH. I would be glad to put it in the record. As I said, I don't know Mr. Henson from Adam, and I do know Chief Kelley, and what I know about him I like.

And I didn't think this kind of indictment should remain un rebutted, and that is why I asked the question in order to give the chief an opportunity to respond to it. I think it will be helpful if he will give us the information I referred to in that regard.

Senator HART. You are asking for the full report to be placed in the record.

Senator BAYH. Or appropriate parts of it, Mr. Chairman. You can look at it and decide.

Senator HART. As I said, it will be made a part of the record.

Senator BAYH. I hate to see a person given that kind of record or a police department that kind of record without the full story having a chance to come out. That is the only reason I brought it up. Another area, Chief—and I don't know why I seem to be the bearer of bad tidings. I just bring them out so that you have your chance to give us your thoughts on them.

But there were certain newspaper stories about Black Panther activities back in 1968, where you were quoted, accurately or inaccurately, as saying that you had initiated massive undercover operations against the Panthers and had agents trailing them 24 hours a day.

First of all, is that statement accurate? And, second, could you be so kind as to tell the committee the nature and scope of the surveil-

lance activities and give us a general feeling as to why this was necessary or if indeed all of this is predicated upon the accuracy of the original statement?

Mr. KELLEY. The Black Panthers became somewhat powerful in the city and, frankly, we construed much of what they were saying and doing as of little consequence. We weren't what I would call actively and regularly investigating them. We were keeping some tabs on their activities, but not to a great extent. Then they became quite militant and on several occasions threatened to kill officers. One, the leader, even challenged me to a duel, but they threatened to kill officers. And guns; they had the guns, and when you get a threat that they are going to kill officers and officers have been killed, with that kind of threat we put a 24-hour surveillance on them. Not a massive undercover effort. We just followed them. We were not going to let them out of our sight. They knew they were being followed. We were not going to get killed by ambush.

Senator BAYH. How many people were subjected to that kind of surveillance?

Mr. KELLEY. Senator, I don't remember, but I think it was about 10 or so. Maybe a few more than that but not any great number.

Senator BAYH. In other words, there was a clear threat to do bodily harm, to violate laws, to commit murder and mayhem on the part of those who were subjected to the surveillance?

Mr. KELLEY. Yes, sir.

Senator BAYH. In the process of this surveillance, did you find it necessary to use any electronic surveillance?

Mr. KELLEY. No, sir.

Senator BAYH. Let me ask you, if I may. Chief, inasmuch as it has been a matter of some modern-day concern, as the Director of the FBI, what is your general attitude, what it will be relative to the use of electronic surveillance, bugging telephones, intervening in communications either in telephones or in offices and in this type of thing. What do you feel the general standard adopted by the FBI should be? What will you demand as the Director?

Mr. KELLEY. To seek, only under the provisions of the Omnibus Crime Bill of 1968, the installation of such and, of course, it must be within full conformance of that. And I am quite sure that the procedure must be that it be cleared through the Director of the FBI. Surely he must okay it. And I would say that if that is not so, then I would institute such. I would want to know of every one that was requested and the reason for it. Of course, it must be in pursuit of a criminal investigation.

Insofar as there be those in the foreign intelligence field, if it be that there is a threat and there be needed espionage or perhaps some other type of investigation which would be to preserve the security of the Nation, I would not be reluctant to request one of the Attorney General.

So, yes; I believe they are of great help. In Kansas City, Mo., through the installation of one in a narcotics case—sought and obtained by the Federal Government—they were able to intercept information which we, in turn, were able to use to stop a murder. Two men were on the way to kill another one.

Senator BAYH. It is the abuse and not the use that concerns me.

Mr. KELLEY. I am sure that there have been occasions of abusing this, and as long as you have people, you are going to have some possible abuse. I don't know of any though.

Senator BAYH. As the Director of the FBI, it would be your intention to send down a clear and unquestionable order that no such activity should be undertaken without specific authority to do so.

Mr. KELLEY. Yes, sir.

Senator BAYH. No agent could go out on a toot of his own and do it?

Mr. KELLEY. That is exactly right.

Senator BAYH. And could you be a bit more definitive, Chief, in the area of national security?

You talked about the implications of the 1968 Omnibus Crime Act which does have that section in there on wiretapping. But the area of great controversy right now is just what is involved as a national security matter. How do you protect yourself and the reputation of the FBI to make certain that when the Attorney General of the United States asks that a bug be planted or if you find that a bug has been planted pursuant to the national security provision, how do you make sure that is defined in the narrow sense of national security? I mean, there are some people who feel that the overthrow of the Government by peaceful means might jeopardize the national security.

How do you define that? How do you protect yourself and others from it? I think you know what I mean.

Mr. KELLEY. Well, I don't know that I know for sure. But I must certainly on all occasions be convinced that it is a matter affecting the security of the Nation. And under prevailing decisions this must be from a foreign type of source, and I would just have to be shown such.

Senator BAYH. In other words, you would interpret national security as a threat to the security to this Nation from foreign nationals and not some of the domestic problems?

Mr. KELLEY. Conceivably it could be. And it could even go into the criminal field, for example, a bombing situation or situations where it certainly could be connected with a security matter; bombing a Federal building, for example, which does come under, I think it is the omnibus crime bill, doesn't it? Anyway, it is a Federal law.

There could be some domestic situations which can go into the matter of security. I'm not well enough informed in that, Senator, to know all of the ramifications.

I do know in national security there seems to be a very clear area for intelligence and—

Senator BAYH. I don't want to let the record stand as it is right now. I don't want to put words in your mouth, but I don't think you want to go on record as saying—as I thought you said—that you would classify a bombing threat as a matter of national security, as it's been described by various court decisions relative to the degree of protection and the authority of planting taps and electronic surveillance?

Mr. KELLEY. No; I said it is a criminal offense and could come under title III, and you could get it under the omnibus crime bill.

Senator BAYH. Yes; but, you know, there is a class of cases that are excluded from the normal safeguards of electronic surveillance, or the safeguards that are applied to most types of normal surveillance, and that is the category of national security, which, by definition, most

people would feel would be a threat to this Nation from another nation, for example, U-boats and foreign agents coming ashore. And you refer to that as your interpretation of national security. Now if you let it stand there, I have no problem. But if you get involved with some wild-eyed kook that wants to blow up a Federal building, then I think you ought to use the other provisions of the law to make sure the electronic surveillance contains the safeguards. I don't want to put words in your mouth, but I am afraid you misunderstood my question, or I misunderstood your answer.

MR. KELLEY. I don't know who misunderstood whom. I was referring to the bombing as coming conceivably, in some people's minds, as a national matter, but it would be a criminal matter.

Senator BAYH. You see, in the *Keith* case, as I recall, the court said you could not use national security wiretaps without a court order for domestic kinds of insurgency.

MR. KELLEY. That is right.

Senator BAYH. And I would suppose that would be the criteria that you would use as the Director of the FBI?

MR. KELLEY. Yes.

Senator BAYH. I think that case was a bombing case itself?

One last area that I would like to touch on very briefly, Chief, and you have been very patient and very kind, and I apologize to my colleagues for dragging on here. But there is one area I want to touch on though.

In 1968 you and many police chiefs around the country were confronted with massive civil disturbances within the cities. I would just like to know, for the record, if you could tell the committee how you think the situations can best be handled by law enforcement officials, particularly, and, if I might, while you are on this area, just get your thinking, and you to review with us the criteria that you would like to see applied. And, also, have you define a little bit further—this is what I am after—as far as your thoughts are concerned about why May Day was held out by the Attorney General, and I guess the President himself—and I don't want you to take issue with the Commander in Chief; I want to know what Chief Kelley thinks, but May Day was held out as an example to be emulated in other places where you had similar disturbances.

Now, I frankly don't think any group with any motivation has any right at all under law to come down and close down the Nation's Capital or Indianapolis or Kansas City for that matter, or throw bricks through the Justice Department windows, or set cars on fire down in Rock Creek Park. That is illegal and ought to be stopped.

I would like to have your opinion about the need to stop this type of a situation, and your ideas about the process to handle this. Do you use reasonable procedures to try to guarantee that you won't have the situation we had in May Day, where, well, I think there was less than 1 percent conviction of all of those that were put in the stockade out there at RFK Stadium. Is there a better way of doing it than May Day?

MR. KELLEY. The best way I know is to make preparations through good human relations and to try to develop a rapport. Failing in that, the best thing that can be done is to have adequate personnel so that you can isolate the problem. Certainly I don't think any law enforce-

ment officer should condone the use of violence insofar as demonstrating for a cause is concerned.

This does not mean to any extent that I ever feel that demonstrations should be curbed, but when it goes into the area of violence, you have an entirely different situation.

Insofar as my trying to assess the May Day operation, all I know about it is what has been told and what I have read, and I think that it is unfair to make an assessment of it without actually seeing it.

You said 1 percent conviction? I would presume that in most cases the percentage of convictions is very low, and there may have been the thought that, rather than to convict, it was an expediency. I don't know.

Senator BAYH. But, Chief, I don't think any group of revolutionaries—no matter how concerned they are about the war in Vietnam for instance—that they have any right to come down here and take over control of the Nation's Capital. They have legal means and peaceful means to protest. And violent activity is not only illegal, but it tends to bring on right wing reaction the other way and makes it more difficult to solve the problem that brought on the would-be revolution.

But doesn't a police force have a responsibility to try to prevent this thing, this type of activity, without a mass sweep operation, in which people who are totally innocent by large numbers are swept up into buses and stockades with the guilty?

Now I know you are going to make some mistakes in the process. There is no way you can keep from doing that. But, when you make these mistakes, shouldn't you find out why you made those mistakes, and shouldn't you try to keep from making those mistakes again instead of holding this out as the best example that could possibly be had?

Mr. KELLEY. You should always learn by your mistakes, yes.

Senator BAYH. Thank you so much, Chief.

You have been very kind.

I won't go into the details of dispensing with arrest warrants and this type of business either. You have been very kind, and I appreciate your patience.

The CHAIRMAN. John?

Senator TUNNEY. Chief, I would also like to welcome you before the committee and congratulate you on being nominated by the President.

Last week when we spoke privately, I raised with you what I considered to be some disturbing questions concerning the proper functions and safeguards on the National Crime Information Center.

I know Senators Kennedy and Bayh have asked you some questions regarding the NCIC. I would like to just explore a few areas they didn't cover.

As you know, the NCIC project was conceived to carry out a recommendation of the 1967 President's Commission on Law Enforcement and the administration of justice. At first it was funded through the Law Enforcement Assistance Administration, which undertook, as a first task, a study of how to safeguard the use of the data collected. I checked, and under the system, detailed guidelines were drawn up under Project SEARCH.

These recommendations reportedly were not all received by the FBI wholeheartedly, and according to reports, they have been largely disregarded.

Do you have any information at this time on those recommendations that were made and why they were rejected?

Mr. KELLEY. I was a member of the National Crime Information Center Advisory Board. I can recall one meeting where some details were given regarding the SEARCH precautions. I am not a technician, but I was informed that these precautions, while very idealistic, were almost impossible to impose and extremely expensive, not only to impose but to continue.

On the other hand, there were some other procedures, which were projected—and this was at a later date, and I was not there—but the man in charge of our computer operation was there and reported to me that the SEARCH safeguards were not acceptable and that instead they had evolved one which had been acceptable and which is now, I think, in effect.

Now, I don't know of the rejection of any precautionary measures by the FBI. I thought they pretty well went along with the recommendations of the Advisory Board.

Senator TUNNEY. Well, the reports appeared in Michael Sorkin's article in the Washington Monthly dated September 1972. I don't have any independent information on that other than his report about what the FBI did, but you are not familiar with it?

Mr. KELLEY. I just simply don't know.

Senator TUNNEY. Chief, the recommendations were as follows: and I just wonder if you disagree with any of the specific ones: "Access to the data banks would be granted only to police, court, and correctional officials. All other Government agencies, as well as private persons, would be barred."

Do you have any problem with that recommendation?

Mr. KELLEY. Police, court, and what else?

Senator TUNNEY. Police, court, and correction officials.

Mr. KELLEY. I presume by the court they mean the prosecuting officials also? Yes, I agree with that.

Senator TUNNEY. The second recommendation stated at the national level only names would be reported or indexed and inquiring policemen would be referred to the State computers for the complete dossiers.

Mr. KELLEY. The complete dossier, by that apparently they are referring to the criminal justice history file. I don't think we go on line with it until about July, and it was my understanding that it would come directly from the NCIC.

They do have recommendations that this would eventually go to a State central repository.

And in the case of Missouri, it would be our capital. But, as far as I know, our State is the only one which is now at the stage where this can actually be implemented.

So, pending that, it would have to come from NCIC in Washington.

Senator TUNNEY. Well, this was the recommendation of Project SEARCH regarding safeguards. I don't know whether or not this recommendation is even at the present time being implemented. But their feeling was that the complete dossier should be kept at the State level, and not made a part of the master file. Do you have any attitude on that? Do you think that the NCIC should keep the complete dossier available at the central computer headquarters?

Mr. KELLEY. This is not my understanding. It is a matter of security, not a matter of operations.

The message inquiring about a person would go to NCIC, and all they would have, in effect, would be an index referring to the State repository where it could be found. And by switching process it would go to that agency and from then on to the agency requesting it. Now, that has not as yet and won't be implemented for quite some time.

I agree to the general idea of it.

Senator TUNNEY. I see.

Another recommendation of Project SEARCH was that individuals would be permitted by law to inspect their own files, and provisions would be made to correct erroneous information and to purge outdated information.

What is your thought on that?

Mr. KELLEY. Do I agree to it?

Senator TUNNEY. Yes, just on that. That was the recommendation by SEARCH.

Mr. KELLEY. We have in our department for quite a number of years permitted people to look over their record. It would I am sure, be a tremendous task were you to say that in the Identification Division of the Bureau that that could be done. Insofar as the computer record, it would probably be relatively easy. I see no objection to it.

Senator TUNNEY. A record would be required to show whether an individual was found guilty or innocent after his arrest. I recall this morning in answer to a question. I believe by Senator Hart, you indicated that in your Kansas City computer operation that you often-times did not have the information regarding the final disposition of the case. You said this failure to update records was because of economic reasons.

Now, do you feel that it would be important to have on this national data reporting and categorization system a provision that the final outcome ought to be included in the file?

Mr. KELLEY. Senator, for years the FBI has requested that as soon as a disposition is known that it be given so that the files will be complete. There has not been complete observance of this request. I don't know what the percentage would be but my guess would be not much over 50 percent. The same would apply to a computer operation I would imagine. They are just loathe, they are just reluctant perhaps to give this. But it is a good idea and we would like to have it.

Senator TUNNEY. Do you think there would be any way of encouraging local departments to make that information available to the FBI inasmuch as, if the case was eventually thrown out because of lack of evidence, the information would seem to have some bearing on the appropriateness of having the rest in the file at all. At least the information would qualify the arrest and the impact of the arrest on that person's record.

Mr. KELLEY. Senator, this actually isn't a permanent record. This is solely for informational purposes on the part of the officers. We do encourage constantly that there be dispositions given. It would be better for the purity of the record to have this, yes, but it is just going to be a tremendously difficult job to get it. I don't think it affects the operations of the police department to not have it insofar as their daily work there.

Insofar as the summation and the presentation to the court though, there is a great effort at that time to get the dispositions.

In other words, when it becomes a matter of legality insofar as presentations, they do obtain these if at all possible.

Senator TUNNEY. But you do feel that as Director of the FBI that you would like to see this information, the outcome of the case, made a part of the computer record?

Mr. KELLEY. The dispositions? Yes.

Senator TUNNEY. And you would encourage local law enforcement agencies to make such information available?

Mr. KELLEY. Yes, sir.

Now, you know how they are set out—for example, four felony arrests, three misdemeanor arrests, three felony convictions, two misdemeanor convictions—you see you can't tie them up there. It is purely informational. It doesn't give you, for example, were you to say four felony arrests and three felony convictions, it doesn't give you which one of the three because it doesn't list any of them as to what was the nature.

Senator TUNNEY. But, it could, couldn't it, without too much extra cost?

Mr. KELLEY. Senator. I am not an expert on data processing, but I think this would enlarge the budget tremendously to go to that great detail. It is purely informational, again. It is nothing from which to make a permanent record. If you had, for example, murder, 1962, conviction—10 years, just think how much more that would add to that little message that is compact and workable.

Senator TUNNEY. Well, if you had a category for murder showing arrests and convictions so that it would be clear if a case were thrown out for lack of evidence, would that make so much more work?

I don't know what use is made of this data. I think that some of us are concerned about what use could be made of it though, and one of the things that was disturbing to me, as a Senator participating in some hearings that Senator Ervin conducted with his Constitutional Rights Subcommittee, was the fact—if my memory serves me correctly—that sometimes this information was made available to lending institutions and other kinds of credit institutions and it was given to people whose business was not directly related to law enforcement. It would seem to me, if this is the case, that the record ought to be complete. If this is an official record, it should be complete and should indicate what the final disposition was of the case.

I don't think, frankly, that this information should be given to a lending institution.

Mr. KELLEY. It should not, and there are methods set up to prevent this.

As was mentioned here earlier, there was one occasion in Kansas City, where there was a violation and we took care of it immediately.

Senator TUNNEY. And when you found that this information was being leaked to the wrong forces, you took care of it?

Mr. KELLEY. Yes, sir.

Senator TUNNEY. One of the things that you might do should you be confirmed as Director of the FBI is to look into the safeguards on the NCIC data, and find out just how well security is being maintained. Do you have plans to do that?

Mr. KELLEY. Yes, sir, I do indeed.

Senator TUNNEY. Another recommendation, sir, was that the system would not include intelligence data such as surveillance of political dissidents or unsubstantiated reports from informers. What is your thought on that?

Mr. KELLEY. It does not include that. Ours certainly does not. I know of no one where that is included.

Senator TUNNEY. And you would be opposed to having that?

Mr. KELLEY. I would.

Senator TUNNEY. In the Washington Monthly article, to which I alluded earlier, it is stated "After taking over the data bank system the FBI abandoned all but one of the SEARCH recommendations, the one that would require criminal data to be stored in computers dedicated solely to criminal work. Later the FBI eliminated even this safeguard, and as the plan now stands, criminal records will be mixed with such things as tax and credit data in computers not confined to criminal work."

Is this statement accurate and if not, why not?

Mr. KELLEY. The suggestion of SEARCH and the suggestion of the NCIC board was that the computer be dedicated, which basically means it is under the direct management, to law enforcement. It is impossible in some cities; in some cities it must become a part of a general computer pool. It must, however, under the NCIC requirements, as I remember them, be under the control still of law enforcement. That is a little difficult sometimes to get that, but it used to be a requirement.

In our city the police department owns and controls it and there is no problem there. It is housed in our operation.

This business about the possibility that there will be a keying in by creditors, credit bureaus, or businesses, I have never heard of that. I don't see how that can be done and I would very definitely be against intrusion by anything such as outlined in this article. I have never heard of anything like that.

Senator TUNNEY. Well, I hope that doesn't exist either.

As I said, this is a report which I certainly have not had the opportunity to corroborate, but it appeared as a report of the Washington Monthly and I hope, if it does exist, that, if you are confirmed, you will see this situation is corrected.

Mr. KELLEY. Right.

Senator TUNNEY. A recent Washington Post article, Sunday, June 17, which was mentioned by Senator Kennedy, discusses the functioning of the ALERT system which is set up in Kansas City. It begins as follows:

Getting stopped for running a red light in Kansas City can be a complicated business these days—especially if you ever participated in a campus demonstration, have a "history of mental disturbance," or at any time "confronted or opposed law enforcement personnel in the performance of their duty."

Information of that nature is retrievable within seconds from the Kansas City Police Department computer, and it could be a factor in a policeman's decision on whether to issue a traffic citation, search your car, or take you to the station for questioning.

If he does any of these things, the incident could come back to haunt the driver on later visits to Kansas City or to other cities hooked into the FBI's NCIC.

Does Kansas City's ALERT system contain names of those who have participated in a campus demonstration or other instances in which they haven't actually broken the law but have just been around in such a situation?

Mr. KELLEY. No, sir; it does not. We do not include those who only engage in demonstrations.

Senator TUNNEY. If the participant was not arrested, is any information included concerning the nature of his participation?

Mr. KELLEY. In other words, is there any intelligence information on that?

Senator TUNNEY. Yes.

Mr. KELLEY. Yes, there are some intelligence references, and as I have previously explained, when an inquiry is made by an officer, for example, about this particular thing, it does not go back to the officer but it goes to the intelligence unit of our department. And after, oh, probably it is the next day, the officer is contacted and asked what happened. Why did you make this inquiry?

It is not, therefore, a factor that might go into the thinking of an officer as to whether or not there should be an arrest, as is alleged in that article.

Senator TUNNEY. And what use thereafter would be made of the information assuming it was lodged with the intelligence bureau of the department?

Mr. KELLEY. What, pardon?

Senator TUNNEY. What use would thereafter be made of the information that this person was in some way, or had in some way, participated in a demonstration though not sufficiently to warrant any kind of arrest but that he was involved in general with the demonstration. Assuming this information was turned over to the intelligence bureau, what use is then made of it?

Mr. KELLEY. We don't put into the files, at least to my knowledge I don't know of any anywhere, observers. There is no use made of it at all.

Senator TUNNEY. So, then the fact that someone had been a participant in a demonstration would not be the basis at some later point as to whether that person ought to be issued a traffic citation assuming that in 2 or 3 seconds, or 10 seconds—under the system that you set up—the information came back that the fellow had participated in a campus demonstration?

Mr. KELLEY. We did for a while have some so-called militants or activists and these were not just people in demonstrations. But we did later purge them. But it could have been back in those days when we first had our start that this could have motivated an officer into making an arrest. I can't tell you.

We suspected it and we purged them.

Senator TUNNEY. I see.

Mr. KELLEY. We had this other system of sending it through to the intelligence—

Senator TUNNEY. Oh, and that then is not available on the spot?

Mr. KELLEY. That is right.

Senator TUNNEY. Who would have access to the information besides the intelligence bureau?

Mr. KELLEY. I don't know that there are any restrictions insofar as our own personnel is concerned. The FBI would have and is sent many bits of information about certain hoodlums, and certain intelligence subjects. Other Federal agencies in the law enforcement field might be sent this. It might be, for example, that there is some possibility that there is a threat against the President or members of the judiciary or Congress and, yes, we channel information outside when it comes within their jurisdiction or is of interest to them insofar as the security personnel are concerned.

So I don't know, I can't tell you of restrictions except that when a person asks about some intelligence subject, he is asked why do you want it? I suppose if he has a legitimate need for the information, being an officer, he is given it.

Senator TUNNEY. Do you know whether this information is given to the NCIC or is merely kept with the local computer?

Mr. KELLEY. There might be some subjects within the intelligence unit, some persons, who would be in NCIC. I don't know Senator, but there could be.

Senator TUNNEY. Do you feel that the NCIC ought to have this information? And I am assuming now that it does not relate to a criminal activity. In other words, it does not lead to an arrest but is merely information of somebody's being present when a demonstration or something of that nature was going on.

Do you think that that should be a part of the NCIC computer file?

Mr. KELLEY. Keeping in mind it is informational, and if it facilitates the officers, if they use that information, if it may prepare them better, I see nothing wrong with it. But so long as it is just based on very nebulous bases, there would be some liability to it, yes.

But always remember that it is informational, enabling the officer to do his job better. It is not to deprive a person of civil rights, but to alert the officer and enable him to do his job better.

One of the greatest concerns, of course, is the physical well-being of the officer and it enables him to better protect himself.

Senator TUNNEY. Then, of course, we get into the problem of purging the files, and, as I understood your earlier testimony, you're in favor of seeing the NCIC files purged on a regular basis?

Mr. KELLEY. Reviewed, yes. Any extraneous matters purged, yes.

Senator TUNNEY. What do you think can be done as far as guaranteeing that the NCIC computer file, the information, is maintained and secured in such a way that it doesn't get into the hands of credit outfits and the like?

Mr. KELLEY. Insofar as the headquarters, Washington, D.C., you have an inspectional process whereby you make checks. Insofar as the outlets throughout the country—and this is a pledge which we do make now—that it will be removed, removable when there is a violation. That is about all you can do. You can have a few inspectional visits from time to time. That is not as effective as saying that, if you violate it, out you go; you no longer have the use of this.

Senator TUNNEY. Well, what do you think ought to be done if, for instance, a major police department was found to be giving this information to, let's say, credit outfits? How can you take effective action under those circumstances?

Mr. KELLY. Well, seeing if they dismiss the officer or take strong administrative action against him or they too will be taken off.

It is a matter, I think, of integrity of the system and I know of no police department or chief who would not impose that type of a penalty. They are going to make sure that it is protected.

Senator TUNNEY. And you, as Director of the FBI, would be prepared to tell a local police chief that he was going to be taken off unless he reprimanded or punished or fired the officer who was found giving this information to credit agencies?

Mr. KELLY. You bet.

Senator TUNNEY. Is there any kind of a criminal sanction for leaking this type of information to an unauthorized individual or agency? Is this covered by common law, do you know, in the local police agency situations?

Mr. KELLEY. I don't know of any. Perhaps there is a Federal regulation. But insofar as police departments are concerned internally, it is misconduct or conduct unbecoming an officer. I think it probably could come within one of the fraud statutes in our State.

Senator TUNNEY. The reason I asked it is that if it is uncorroborated and raw hearsay type of evidence it could be libel.

Inasmuch as it is computer tape and is a printout, it is the kind of thing that I think we have to guard against because with the ever-increasing use of computers, what may well be slander or libel of another person can become a record that is going to follow that other individual for the rest of his life. And I think this is something which is very dangerous and a substantial invasion of one's civil liberties; wouldn't you agree?

Mr. KELLEY. I think by all means that personal liberties should be guaranteed and proper security measures constantly scrutinized, and I think from the danger alone of having lost these, that every police department is going to be amply careful that this is not going to be violated.

Senator TUNNEY. In his testimony before the committee, Mr. Gray stated: "Any Federal agency can request and receive all information contained in the NCIC for purposes of carrying out its official mandated responsibilities . . . There is no limitation on the length of time NCIC information may be retained by a Federal agency." And, further he stated: "The FBI has no further control over the information once it leaves our possession. We must rely upon the Federal agency to afford proper security to the information."

Do these statements in any way concern you insofar as they would seem to indicate that the FBI has really very little control over the information that is contained in the NCIC data bank?

Mr. KELLEY. Well, it isn't actually the FBI information. They are a switching agency; switching it over eventually, when the State systems are developed, to the proper outlet.

That statement is true to the extent certainly that you have no control over them after the bits of information go out, but, again, you must remember that there is a great feeling of need to insure security. I have been in on some of these NCIC councils and they have drawn time and time again on the matter of security and purity of the system.

Senator TUNNEY. Do you think that there is any need for Congress to enact legislation as it relates to safeguards of the NCIC system and

as it relates to the computer banks that are kept by the local law enforcement agencies which are automatically switched to the NCIC for information?

Mr. KELLEY. I don't know of any need, but I would be very happy to discuss it in the oversight committee type of atmosphere and do whatever is necessary in order to insure security.

Senator TUNNEY. Thank you.

Mr. KELLEY. Most of the need, of course, is at the State level and many State plans do just that; to establish statutory provisions governing the use of computer operations.

Senator TUNNEY. I would just like to pursue two issues on the keeping of personal dossiers by the FBI, which I raised with you in our conversation last week. I know that Senator Bayh has raised the issue of personal dossiers with you.

The first concerns whether an individual ought to have the right to see his own dossier. You indicated that you saw no reason why he should not be able to do so; is that correct?

Mr. KELLEY. Not to see—and here I am talking about the criminal record; the record of a man—

Senator TUNNEY. Yes.

Mr. KELLEY [continuing]. And this would present some problems, but if he can present a reason why he needs it and wants to look at it, yes, by all means.

For example, in our police department, this is assured. In the FBI it might become very cumbersome where they might have hundreds and thousands of requests, I don't know, in which case it may be operationally necessary to place some restrictions on it but, yes, he is entitled to see it.

Senator TUNNEY. The reason I mention this is that I recall when we had hearings on the nomination of Mr. Gray, that Congressman Koch came before the committee and gave an amusing account of how he tried to see his own dossier or file, relating how difficult it was to the point that it was impossible to see his own file. I just would like to have your thoughts regarding the keeping of a file on Congressmen, a file which does not relate to criminal activities, or suspected criminal activities. Although I think we would be remiss in not keeping a file on Congressmen and Senators, if they were suspected of a criminal activity, what about situations where they are not suspected of criminal activity. Do you think there should be a general informational file on them?

Mr. KELLEY. I frankly don't know what this file is, Senator. I have never seen one and I do not believe in maintaining a file just for caprice or for rancor, or for anything other than a legitimate purpose.

I just don't know what they are. Some files, of course, are kept in the FBI on Members of Congress who have previously been Federal officials and had investigations conducted concerning them. I am confident you don't mean those files.

There probably are maybe bits of information put into the file as a result of some citizen saying something that he wanted recorded in the FBI and that would—at least in the days while I was in the FBI—that, if that were to be recorded, it probably would go into a miscellaneous file.

I just don't know of the files that you speak of.

Senator TUNNEY. But you don't think they should be kept though?

Mr. KELLEY. Sir?

Senator TUNNEY. You don't believe they should be kept?

Mr. KELLEY. Not the capricious type of thing as you mentioned to me for political purposes.

Senator TUNNEY. Should a general surveillance file or a general file without any information going into it that is of a criminal character be kept?

Mr. KELLEY. Just a blanket file? No; say they were going to open a file on Senator Tunney for instance; no.

Senator TUNNEY. Or anybody.

We have had information that files are opened on men once he decides to run for Congress. I gather from your testimony that you don't think that is a good idea?

Mr. KELLEY. That is right, not just because he is a Member of Congress.

Senator TUNNEY. And who knows, you might find your own file.

Mr. KELLEY. I think I am probably in there.

Senator TUNNEY. The second issue in regard to personal dossiers concerns leaks.

By the way, the first issue (allowing a person to see his own file) relates to all citizens. I just mentioned Congressmen as the underlying example of the kind of thing that concerns me. I hope your answer to the questions would be the same as it related to any citizen; that is, that a file should not be kept on anyone if he is not suspected of criminal activities.

Mr. KELLEY. Yes.

Senator TUNNEY. Now, the second issue is with regard to leaks.

When Jack Anderson came to this committee, in a rather dramatic way, he stacked up about 10 files, FBI files, and he read to us from those files. As I recall it, one of them that he read related to a movie actor and at the top of the file it said the man is not, nor has he ever been, a suspect in a criminal proceeding or investigation.

It was a file on this movie actor which related, I think, to his sexual conduct. How do you feel about having these kinds of files leaked to newspaper reporters and others?

How would you, as Director of the FBI, go about seeing that they are not leaked?

Mr. KELLEY. I certainly am opposed to circulating the information of that type to newspaper reporters or to any other source who is not entitled to that information. And my action on it would be severe discipline action and I am inclined to say that in determining this, I would let him go.

Senator TUNNEY. You would what, sir?

Mr. KELLEY. I would fire him.

Senator TUNNEY. In the ITT perjury investigation that is presently being conducted by the Justice Department, Attorney General Richardson, in a letter to the Chairman of the Judiciary Committee, dated June 7, 1973, related that matters concerning possible perjury during the confirmation hearings for Mr. Richard Kleindienst would be referred to special prosecutor Archibald Cox.

Now, in light of this, what role do you anticipate the FBI will have in connection with the Cox investigation?

Mr. KELLEY. With what?

Senator TUNNEY. With the Cox investigation.

Mr. KELLEY. What would we do?

Senator TUNNEY. Yes, do you have any knowledge of that?

Mr. KELLEY. No, sir.

Senator TUNNEY. Do you feel that the FBI should be prepared to play a role in the investigation if asked?

Mr. KELLEY. I don't know a thing about the matter, sir, I just can't answer you that.

Senator TUNNEY. Well, is there any reason why the FBI shouldn't conduct an investigation in that? I mean, if the FBI is asked by special prosecutor Cox, you would be prepared to assist?

Mr. KELLEY. Well, certainly, he having been appointed by Mr. Richardson, would have jurisdiction there. Yes, we would cooperate.

Senator TUNNEY. Do you believe, in a law enforcement agency like the FBI, that every officer and employee should carefully avoid actions that may reasonably be construed as involvement in partisan political politics?

Mr. KELLEY. I do.

Senator TUNNEY. I am impressed by the report I have heard related to me as regards you and the fact that people cannot even tell what party you belong to as a result of your personal noninvolvement in politics. I think it is necessary to state that for the record, and I certainly commend you on it.

Under what circumstances in the future do you expect to make speeches which might reasonably be thought to identify you, as Director of the FBI, as being involved with partisan politics? Do you envision such a situation where you would give a speech that would be so construed to the bar, for example—

Mr. KELLEY. I have been in the bar for many years and have made many speeches and have constantly avoided any situation which might indicate that the speech be politically influenced or politically oriented. I have always avoided that.

Senator TUNNEY. In July of 1970, President Nixon, by his own acknowledgement, approved a memorandum for a program of domestic intelligence gathering. I would just like to ask you if you concur with some of the recommendations of that memorandum. In one section concerning the mail the memorandum states: "Restrictions on legal cover should be removed." Another section states: "Present restrictions on covert coverage should be relaxed on selected targets on priority, foreign intelligence, internal security interest." What would be your thoughts on that?

Mr. KELLEY. Mail coverage I feel has been very productive in the past in a number of investigations. And what was the second?

Senator TUNNEY. It said "Restrictions on legal coverage should be removed" and that assumes, I suspect, that there are certain types of legal coverage of mail that is permitted, but that those restrictions should be removed. Also it said "Present restrictions on covert coverage should be relaxed on selected targets of priority, foreign intelligence, internal security."

Now do you subscribe to that?

Mr. KELLEY. I don't understand it.

Senator TUNNEY. Neither do I. That is what worries me.

But whenever I hear that "restrictions on legal coverage should be removed" I have to assume that it is being removed by illegal procedures, particularly if it is not going to be an Act of Congress that is going to remove it. Doesn't that bother you?

Mr. KELLEY. Yes, I am against getting into any illegal activities.

Senator TUNNEY. And here is another one. "Present restrictions should be modified to permit the procurement of vitally needed foreign cryptographic material. Also, present restrictions should be modified to permit selected use of this technique against other urgent security targets."

Do you have any thoughts on that?

Mr. KELLEY. No, sir.

Senator TUNNEY. Apparently, Director Hoover, according to reports, was not in favor of these recommendations. He felt that this program of domestic intelligence gathering was not necessary and perhaps even dangerous. And it is my understanding that because of Mr. Hoover's decision to oppose the plan, a couple of days after having approved it, President Nixon disapproved it.

I would assume that you believe that these types of activities should be made a part of any consultation that you would have with the Congress in this oversight?

Mr. KELLEY. Yes, sir.

Senator TUNNEY. Is that correct?

Mr. KELLEY. Correct.

Senator TUNNEY. Would you have any directives to send out to the men in the field and the men that work for you in the Bureau with respect to their partisan political activities?

Mr. KELLEY. If there have been none sent out, I certainly will. But I am confident they have been sent out; the Hatch Act and all of the other admonitions have been sent out.

[Letter with enclosure subsequently submitted by Clarence M. Kelley follows:]

JULY 20, 1973.

Hon. JOHN V. TUNNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TUNNEY: During the recent confirmation hearings concerning the Directorship of the FBI you inquired of me as to whether or not any directives would be sent to Bureau personnel with respect to their partisan political activities (page 155, line 19 through 24 of hearing testimony).

Attached for your information is a copy of a memorandum to all Special Agents in Charge dated July 17, 1973, pertaining to this matter. Contents of this memorandum are made available to all employees at FBI Headquarters as well as in the field.

Sincerely yours,

CLARENCE M. KELLEY, *Director*.

[Enclosure.]

[Personal Attention—Memorandum 29-73]

UNITED STATES DEPARTMENT OF JUSTICE,

FEDERAL BUREAU OF INVESTIGATION,

Washington, D.C., July 17, 1973.

Memorandum to all special agents in charge

(A) Political Activity—Rules for Federal Employees—You are referred to Memorandum 17-72 dated 8/22/72 at which time copies of the pamphlet (Fed Facts 2) concerning political activity of Federal employees was sent to you for distribution to your employees. This pamphlet set forth in brief form permissible and prohibited activities for Federal employees.

It was also pointed out in referenced SAC Memorandum that a three judge panel of the U.S. District Court had recently ruled two to one that the Hatch Act, which governs the conduct of Federal employees in connection with political activities, violates the First Amendment to the Constitution in being "impermissibly vague and over-broad." This is to advise that the ruling of the District Court was appealed by the U.S. Government to the Supreme Court and on 6/25/73 the Supreme Court upheld the constitutionality of the Hatch Act in a six to three decision. Therefore, the data set forth in Fed Facts 2 distributed in August, 1972, is still applicable.

You should once again remind your employees of existing regulations which prohibit Bureau employees from engaging in any form of political activities, except voting, and any instance of actual or proposed activity in connection with this matter on the part of employees which would be questionable should be brought to the Bureau's attention.

CLARENCE M. KELLEY, *Director.*

Senator TUNNEY. Do you feel that the structure of the Department of Justice allows the FBI to effectively carry on its investigative work free of political considerations?

Mr. KELLEY. I know of no reason why it does not. I haven't really studied it. I don't know what the structure is presently, frankly.

There are 59 field offices, I understand, and they have about the same type of organization now that they did have and I don't know if things have changed since I have been there.

Senator TUNNEY. We recently learned in his last year J. Edgar Hoover increasingly isolated the FBI from other Federal agencies. What changes do you expect during the next few years in the relations of the FBI and other governmental agencies, including the law enforcement agencies, at the Federal, State, and local level?

Mr. KELLEY. I feel sure that there should be a closeness and that we all should be together on occasion and certainly work together on all occasions.

I think it is necessary that someone take the leadership and I hope that I can do so.

Senator TUNNEY. What changes in the relationship or levels of co-operation are being entered into between the FBI and the State and local law enforcement agencies, because of the maintenance and expansion of the NCIC? What kind of cooperation is taking place between the FBI and these local agencies as a result of the NCIC?

Mr. KELLEY. I think that it is at a very high level.

Senator TUNNEY. And you think that it has helped bring about a better cooperation?

Mr. KELLEY. Yes, sir.

Senator TUNNEY. Do you have any idea what percentage of the FBI budget for fiscal year 1974 and 1975 is projected to be used or funded in the recruitment and training of Federal, State, and local law enforcement officers as compared to fiscal 1971, 1972, and 1973?

Mr. KELLEY. I haven't the faintest idea.

Senator TUNNEY. Would you be in favor of seeing an extension of improvement in training of local law enforcement officials from your experience in the Department as well as your experience as chief of police?

Mr. KELLEY. I was a member of a committee of chiefs of police and educators reviewing the FBI National Academy operations, the curriculum, the general procedures. It was recommended that they continue with the regular FBI National Academy courses and that they go ahead into the field of seminars and 1-week or 2-week programs.

I think in law enforcement there is a great need for this and the FBI can supply it.

Senator TUNNEY. What safeguards do you feel should be initiated, if any, to protect against the FBI becoming a national police force?

Mr. KELLEY. I think that it has been thoroughly ingrained in the citizens of the United States and the police departments that the FBI does not aspire to a national police force status and, as a matter of fact, on every opportunity warns against it. I think this should be continued. I would say that there should be instead an enlargement of local powers, there should be a relinquishment to the local authority whenever possible. For example, I do not object to the FBI having a different policy insofar as theft of automobiles is concerned, which in years past have been prosecuted federally. Now they are being handled locally.

So I certainly don't mean that there should be a diminution of the ethics of the FBI but there should be centralizing and a focusing on important matters; important to the security and well-being of the Nation.

Senator TUNNEY. Chief, you are, as I read your biography, 61 years old. Are you in good health?

Mr. KELLEY. Yes, sir.

Senator TUNNEY. Senator Byrd introduced legislation recently with respect to putting a limit on the tenure of the Director of the FBI and I believe it was 7 years. What are your thoughts with respect to that legislation?

Mr. KELLEY. I think that there is a measure of assurance and of independence that is gained by virtue of some tenure. My personal experience is that I have worked now all of these 33 years without any assurance of what is going to be my job tomorrow. While in the FBI I could have been dismissed. And since becoming chief of police, I serve at the pleasure of the board of police.

So my personal experience is that I need no assurances of tenure but if there be such legislation I would hope that there be some kind of tenure assured because I think it gives not only comfort but a measure of support that the Director needs.

And time? I don't have any idea and I would not object were it not applying to me. I like my independence and I would hope that you would feel the same thing applies to me and—

Senator TUNNEY. Well, I haven't taken a definite position myself on the tenure bill. I at times felt that it was necessary, and at other times I felt that perhaps it was not. I must say that in asking you this question really, it was for the purpose of education and information. As I understand your answer, you feel that the tenure ought to be at least 7 years.

Mr. KELLEY. I can't say that, Senator. I thought at one time 9 years, then 7 years. I don't know. I would like to give some thought to it and I just don't know at this time just what the particular period is.

Senator TUNNEY. In recent newspaper articles, for example, the Washington Star of June 7, 1973, it has been alleged that if confirmed you will appoint Roy K. Moore, special agent in charge of the Jackson, Miss., Field Office to head the various FBI operating divisions such as General Investigative, Special Investigative, and Intelligence. Is this correct?

Mr. KELLEY. I did not say that, and I have no idea where that information came from.

Senator TUNNEY. You have not said that?

Mr. KELLEY. I did not say that.

Senator TUNNEY. Is he foreclosed?

Mr. KELLEY. Roy Moore and I came through training school together. I have a high regard for him. I don't think he has the ambition to become No. 2 man, I don't think he wants it. I have not asked him and I may not. I don't know.

Senator TUNNEY. Well, in the event you may ask him, according to an article published in the Los Angeles Times, on February 13, 1970, Mr. Moore was head of the Jackson office when on June 30, 1968, the FBI and Meridian police decided to use money, raised by local Jewish leaders for the purposes of obtaining information which would lead to the arrest of persons terrorizing the black and Jewish communities, and paying informants to arrange a trap which resulted in a shootout killing one Ku Klux Klanswomen and injuring another Klansman as well as a policeman and a bystander. Further, according to this article, the policeman involved in the incident stated they expected a gun battle and did not expect anyone to be taken alive.

There was some concern on the part of people who were interested in fairness and justice that, despite the fact that these individuals might not like the Ku Klux Klan and people who are Klansmen—there was some concern that this type of an entrapment might be violative of the civil rights and liberties of those who were trapped.

Do you care to comment on the incident? Do you know anything about it?

Mr. KELLEY. No sir.

Senator TUNNEY. What is your attitude toward entrapment? How do you feel FBI agents and law enforcement agents ought to proceed when they have a suspect, a number of suspects, and they have difficulty pinning any specific crime to these individuals so they decide to go another route and that is to perhaps help or assist through informers the commission of a crime?

And in the case of this one down in Mississippi, apparently substantial amounts of money were paid to the informants to elicit their help. What are your thoughts in regard to that type of entrapment?

Mr. KELLEY. Well, I do not subscribe to any system of trickery or however it might be termed in order to achieve any goal.

We are in the business of administering justice and not disposing of it and such would be the case were you to engage in entrapment.

The most frequently voiced objection about informants has been that informants sometimes come closest to the line, going over the line, but the agent, the responsible officer, guides informants so that they do not do this. And I don't think that you will find any cases, though there are a few where it might border and be very close to entrapment, but entrapment is not by any means an ordinary or common practice among police or rather Federal agents. I am sure.

Senator TUNNEY. I would like to say, Chief, that I have been impressed by your record as a law enforcement official. I think that there is no question but that you have demonstrated over the course of your career that you not only are an effective lawman, but that also you have been able to work with the citizens in the community. The letters that

have come in recommending your confirmation have stated that you have been able to work with the minority community in the city in which you live and you have been attendant to civil liberties.

I must say that I am very deeply concerned about the whole question of surveillance of individual citizens and the maintenance of records and having these records put on to a computer by the FBI or other law enforcement officials, which records can be reviewed by leaking the information to reporters—such as the files of Jack Anderson—or to credit unions or to others. And I hope most sincerely that when you are confirmed by the Senate that you will give very close attention to the customs now in the FBI and local law enforcement agencies to maintain computer files on individuals to the end that there is maintained the strictest type of security on those files and to the end that those files are on a regular basis surveyed and purged if purging is necessary. Finally, I hope that you will guarantee that general surveillance files are not going to be kept on any citizen, whether he be a Congressman, or reporter, or any other citizen, who is not suspected of crime or who has not been engaged in criminal activities in the past. Perhaps the best way to bring about the big brother state is to have files kept on people for no purpose whatsoever and then have the ability to selectively leak those files so as to embarrass the person or to prevent the person from getting a job. We all have heard stories about people being prevented from getting jobs because of some dossier that was kept by some agency including the FBI, which was made available to someone.

Now that concerns me, and I gather from the answers that you gave to the questions that I asked you this afternoon that it concerns you too?

Mr. KELLEY. I share the same thoughts as you; to try to protect the citizens' rights. And as far as I possibly can do so, I assure you of that.

Senator TUNNEY. Thank you very much.

Senator HART. As we adjourn, Mr. Kelley, May I enter into the record a telegram from the president of the Michigan Association of Chief of Police which is addressed to Chairman Eastland which includes their strong endorsement of you "As a law enforcement executive with a personal record and reputation for top level professional conduct, great integrity, and the total absence of partisan political actions." It states the Commission and Association urges prompt action of the committee.

[The telegram from the Michigan Association of Chiefs of Police follows:]

[Telegram]

MICHIGAN ASSOCIATION, CHIEFS OF POLICE,

June 18, 1973.

Senator JAMES O. EASTLAND,

Chairman, Senate Committee on the Judiciary, U.S. Senate Office Building,
Washington, D.C.:

The Michigan Association Chiefs of Police assembled today at its annual convention at Boyce Falls, Michigan, respectfully brings to your attention its enthusiastic endorsement of the President's nomination of Clarence M. Kelley as Director of the Federal Bureau of Investigation.

Mr. Kelley is known to many of our members as a most distinguished chief of police who has established a record for truly professional competence as well as innovation in modern law enforcement techniques at his department in Kansas City, Missouri. Chief Kelley is further known as a law enforcement executive

with a personal record and reputation for top level professional conduct, great integrity and the total absence of partisan political actions.

The Michigan Association Chiefs of Police is of the strong opinion that Chief Kelley will make a tremendous contribution to all of law enforcement if he is approved by the Senate as Director of the FBI. Our association urges prompt approval of Chief Kelley by the members of your committee and the United States Senate.

WALTER E. KRASNY, *President.*

Senator HART. Notwithstanding that, we are just going to adjourn. We will adjourn until 10:30 tomorrow in this same room.

[A beforementioned newspaper article from the Independent Journal published by the Church of Scientology follows.]

SCHOOL CHILDREN RECORDS TO BE FILED IN FEDERAL CRIMINAL COMPUTER

SACRAMENTO.—Is your child in kindergarten this year? Or will you have a child in any of the primary grades over the next few years? If so, there's a chance that, unknown to you, your youngster's name and fingerprints will be placed in a computerized file, alongside the files of rapists, murderers and thieves.

This could come about because your child may be selected this year as "a potential future criminal". And, although guilty of no crime, his name and file will be included in the Justice Department's central criminal computer among those of convicted criminals.

Beginning in 1975, any police officer or government agency would have instant access to your child's life history, his school grades, his relations with teachers and classroom associates. His file would be kept for the rest of his life and be instantly available if he is ever stopped for a traffic ticket, jaywalks, applies for a government job or appears as a witness in court.

If your child ever does get into trouble with the law, the judge who will decide between probation and incarceration might have, as part of the probation report, that your youngster was classified as a "predelinquent" back in 1973. And if your youngster's future life is so flagged, everything from traffic tickets to government employment applications will go into the central computer.

According to the office of the attorney general, some \$50 million has already gone into making the central file the most complete in the nation. Access to the central computer can be made by any law enforcement agency by simply dialing a telephone, directly into the computer. A moment later, a readout will appear in the dialing office, giving the full file.

The computer is primarily designed to keep central records on criminal activity—something desperately needed by law enforcement agencies. It would prevent the kind of embarrassment where a wanted criminal is apprehended by a small-town jurisdiction for a petty crime, and subsequently released, only to learn later the man was, say, a hunted murderer.

But, the concept of putting the files of some kindergarten children into the computer came out of the Law Enforcement Assistance Administration (LEAA) which puts money for new techniques of law enforcement into the hands of local authorities.

The California Council on Criminal Justice—comprised, largely, of men and women in law enforcement—submitted the plan for picking out youngsters in early years of schooling, the "possible killers and robbers of the future."

The computer file will be operated by the Federal Bureau of Investigation.

Parents will not be told if their youngster is having the file made on him and their first knowledge will probably be the day when, years from now, the youngster is stopped for a traffic citation and the police officer checks him out over his radio. The radio will come back in seconds to state the youngster was a "predelinquent" in school.

Individual schools, where the program of watching the kindergarteners for aberrational behavior has been instituted, are being kept a closely-held secret by the department of Justice, local agencies and the California Council on Criminal Justice.

But, leaks from individual school boards have indicated some areas where the programs are underway.

The leaks come in applications for funding by the boards. In Orange County, the funds are earmarked under a program called "Behavior Assessment and Treatment Center." In San Diego County it's called "Simplified Analytical Meth-

ods of Behavior Systematization." In Ventura County, the program does not hide what's happening. It's simply called "Community Behavior Modification Program for Pre-delinquents."

The California Council on Criminal Justice doesn't even call its program an identifiable name. It's titled by them as "Correctionetics." When asked to define that term, a spokesman said, "a plan to computerize and centralize all juvenile records, including information on psychiatric treatment."

It isn't only a life-long record and flagged identity your youngster will get if he is one of those pin-pointed as a future criminal. He will also get extensive attention and "treatment" in behavior modification during his years in school, in an effort to sway him from his supposed path to criminality.

Again, parents will not be told, according to officials, that their youngster's behavior is being "modified." Their first knowledge may come when their child comes home to talk about how he was strapped into a sophisticated machine.

Sophisticated "hardware" has reportedly been developed to be used on the youngsters. It was developed by the California Technical Research Foundation, which was, at one time, an arm of the Council on Criminal Justice.

The organization became independent of CCCJ after it received \$2 million in grants to develop, among other things, "early detection measuring devices for the propensity of a person to riot or commit a criminal act." The grants came from the Law Enforcement Assistance Administration, and the State of California.

Consequently, the work and developments of the organization can be kept secret from the public and the legislature. It is answerable only to the governor.

And, although the organization will not reveal the devices it has designed to be used on children in the "behavior modification programs," it has announced its development of other crime-fighting hardware such as a laser security fence and the use of NASA satellites for transmitting fingerprints.

So far teachers and teacher organizations have not commented or criticized the programs publicly. However, some educators have admitted private concern.

"The kids who are picked for the program," said one, "may not be pre-delinquents at all. They just might be some kids who have a personality clash with their teacher—and for that they get a record for life and submission to some 1984 brain machines."

[Whereupon, at 5:30 p.m. the committee recessed to reconvene at 10:30 a.m. Wednesday, June 20, 1973.]

NOMINATION OF CLARENCE M. KELLEY TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

WEDNESDAY, JUNE 20, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:35 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Byrd of West Virginia, Hruska, and Fong.

Also present: Peter Stockett, Francis C. Rosenberger, Tom Hart, and Hite McLean, professional staff members.

The CHAIRMAN. Here is a telegram from Clifford M. Spottsville, municipal judge, Kansas City.

TESTIMONY OF CLARENCE M. KELLEY—Resumed

Mr. KELLEY. I beg your pardon, Mr. Chairman?

The CHAIRMAN. I have a telegram from Clifford M. Spottsville, judge, division 2, Municipal Court, Kansas City. Do you know him?

Mr. KELLEY. Yes, sir.

The CHAIRMAN. Who is he?

Mr. KELLEY. He was formerly an assistant U.S. attorney for the western district of Missouri in Kansas City, Mo. He thereafter became an assistant prosecuting attorney for Jackson County, which includes Kansas City, Mo. He approximately, I would say 2 years ago, became a municipal judge. He is one of the fine black lawyers we have in Kansas City. I have been with him on numerous occasions discussing police matters and have a high regard for him.

The CHAIRMAN. There is a telegram from Everett P. O'Neal, O'Neal Tire Co., Kansas City. Do you know him?

Mr. KELLEY. Yes sir.

The CHAIRMAN. Who is he?

Mr. KELLEY. He owns a tire store and has an excellent business. He also owns a guard service, furnishing guards for numerous enterprises throughout the city, including one of the housing projects. He is a very responsible person, a leader in the Negro community, and I have on many, many occasions discussed mutual matters of interest with him.

The CHAIRMAN. They will be admitted into the record.

[The above referred to telegrams follow:]

KANSAS CITY, Mo.,
June 18, 1973.

Sen. JAMES O. EASTLAND,
Capitol Hill, D.C.

I recommend that Clarence Kelley be confirmed by the Senate as Director of FBI. My contact with him as I served as an assistant U.S. attorney and as first assistant prosecuting attorney for Jackson County, Mo., and as a citizen, plus the many improvements made in the police department during his tenure as chief of police. All have demonstrated his ability as an administrator of a large law enforcement organization. I am certain that he is aware through his experience here of the aspirations of all people including minorities, and that all people can look forward to even application of and participation in the enforcement of the laws of the United States if he is confirmed. These qualities plus 20 years of experience in the FBI make him eminently qualified for this position.

CLIFFORD M. SPOTTSVILLE,
Judge, Division 2, Municipal Court.

KANSAS CITY, Mo.,
June 18, 1973.

Senator JAMES O. EASTLAND,
Senate Building,
Washington, D.C.

As a long time businessman in Kansas City, I want to endorse the confirmation of Chief C. M. Kelley for Chief of the FBI. Chief Kelley has been a very fine man to all people of Kansas City, one who has a feeling for the people. I highly recommend him for the job. If I'm needed, I will be glad to come to Washington in his behalf.

EVERETT P. O'NEAL,
O'Neill Tire Co.

The CHAIRMAN. Bob?

Senator BYRD. Thank you, Mr. Chairman.

Mr. Kelley, I congratulate you on having been nominated to the Office of Director of the FBI.

How many years of experience did you have in the FBI?

Mr. KELLEY. I am sorry, I could not quite hear that.

Senator BYRD. How many years of experience have you had in the FBI?

Mr. KELLEY. I have been in the FBI 21 years. I left August 8, 1961, entered October 7, 1940.

Senator BYRD. 1940?

Mr. KELLEY. Yes, sir.

Senator BYRD. What, Mr. Kelley, is the authority for the Bureau's intelligence-gathering operation? What is the statutory authority?

Mr. KELLEY. For the Bureau's—

Senator BYRD. Intelligence-gathering operation.

Mr. KELLEY. The constitutional provision that the President provides for the security of the Nation is, in my understanding, the central source for that authority.

Senator BYRD. You are saying that there is no statutory authority but that the Bureau's intelligence-gathering operations have as their source of authority the inherent powers of the President. Is that the substance of your answer?

Mr. KELLEY. That is my understanding, Senator.

Senator BYRD. In 1936, FBI Director Hoover instructed the FBI's field offices to obtain from all possible sources information concerning subversive activities conducted in the United States by Communists, Fascists, and representatives of other organizations or groups advo-

eating overthrow or replacement of the Government of the United States by illegal methods. On September 8, 1939, President Franklin Roosevelt issued Executive Order No. 8247, in which he directed the Attorney General to increase the personnel of the Federal Bureau of Investigation, Department of Justice, in such number not exceeding 150, as he should find necessary for the proper performance of additional duties imposed upon the Department of Justice in connection with the national emergency.

Do you feel, Mr. Kelley, that the September 8, 1939, Executive order is the source of the FBI's jurisdiction in intelligence matters?

MR. KELLEY. I always felt that this was an expression to set out in this type of a directive the scope and the general direction. I would not term it as the source of the authority, but an articulation of it as interpreted by the President and as expressed by the Director flowing originally from the Constitution, yes.

I really don't know, Senator, what the impact actually is of a Presidential directive, and there was one, as I recall. We had been told about this frequently during training, about this Presidential directive of 1939, and I always construed this as a clarification of it. Nor do I know how long it lasts or anything of that type. It is always my feeling that it did stem from the Constitution and was just expressed in that manner.

Senator BYRD. It is just a matter of opinion within the Bureau that the authority for the intelligence-gathering operations of the FBI stems from the Constitution, or does this derive from any court decisions? What is the genesis of this belief that the source of the intelligence-gathering operations lies in the Constitution?

MR. KELLEY. I cannot answer you authoritatively, Senator.

Senator BYRD. Has this matter ever been discussed within the Bureau during your service in the Bureau? Do you know of its having been discussed?

MR. KELLEY. I do not recall its ever having been discussed. There never appeared to be any question as to the authority.

Senator BYRD. Do the annual reports of the FBI refer to the Executive order of President Roosevelt on September 8, 1939?

MR. KELLEY. They do; I seem to recall they do refer to this. And I know that within the training school, frequent references were made to that.

Senator BYRD. To that Presidential order?

MR. KELLEY. Yes, and particularly as a designation of the agency which was to handle that type of a violation.

Senator BYRD. Would you have any knowledge of any Executive order or legislative act which, over the years, superseded the Executive order issued by Mr. Roosevelt on September 8, 1939, with reference to the intelligence-gathering functions of the FBI?

MR. KELLEY. No, sir.

Senator BYRD. Charles Brennan, the former head of the FBI's Domestic Intelligence Division, told the Scranton Commission on Campus Unrest in 1970 that the Bureau's authority went back to Roosevelt's 1939 order to investigate subversive activities and that it was "within the framework of this Executive order that basically the FBI over the years has tried to fulfill these responsibilities."

Is there any question in your mind but that the intelligence-gather-

ing activities of the FBI are rooted in Executive power and in Executive power only, deriving, in the opinion which you have expressed, from the Constitution of the United States?

Mr. KELLEY. There is no question in my mind but that this power was vested in the President and that he in turn can designate and did designate in 1939 that the FBI was the branch of the executive which should handle this particular duty which he had originally through the Constitution.

Senator BYRD. Is there any evidence other than Executive orders—and the abdication of the Congress of its own responsibility—to support your statement that this power vests in the President of the United States under the Constitution?

Mr. KELLEY. I know of no other authority. I must confess I am not a constitutional lawyer, but that was always my understanding, Senator.

Senator BYRD. I think that is perhaps a general understanding.

President Nixon in July of 1971 issued a new Federal employee security order, choosing as the reference point the Executive criteria for FBI intelligence. Besides defining Communists, Fascists, and totalitarian groups more fully, the Nixon order extends intelligence coverage to—

Any group that engages in, unlawfully advocates, or adopts as a means of obtaining its purposes, the unlawful damage or destruction of property or injury to persons or the commission of acts which violate laws pertaining to riots or civil disorders, obstructing the recruiting and enlistment service of the United States, and beating officers of the United States, or related crimes or offenses.

Do you believe that that order serves as an additional point of reference to the FBI's authority in the intelligence-gathering field?

Mr. KELLEY. By that order, was the FBI specifically designated as the agency?

Senator BYRD. Yes, I believe so, but am not sure.

Mr. KELLEY. I think that this extends it, yes.

Senator BYRD. Has the administration itself been forced to rely upon this so-called inherent Executive power in defending these intelligence-gathering functions of the Bureau?

Mr. KELLEY. You say have they been forced to defend—

Senator BYRD. Yes, has the administration been forced to rely thereon?

Mr. KELLEY. I don't know, Senator.

Senator BYRD. In testimony before the Subcommittee on Constitutional Rights in 1971, the Justice Department asserted formally that domestic intelligence-gathering operations are based on inherent Executive powers. The clause resorted to in the defense of an administration's position in this regard is the one which states that the President shall "Take care that the laws be faithfully executed." Is that correct?

Mr. KELLEY. That seems to be correct, yes, sir.

Senator BYRD. In short, the FBI's charter comes from the President. Would you agree?

Mr. KELLEY. The designation of the FBI to fulfill his obligation to protect the country does come from the President, yes.

Senator BYRD. There is no statutory authority from which it arises?

Mr. KELLEY. Senator, I know of none.

Senator BYRD. Do you think that Congress should establish a more firm legal foundation for domestic intelligence-gathering activities?

Mr. KELLEY. I am not prepared to answer that, Senator. I would say that that is up to Congress, and we certainly would be guided by their wisdom.

Senator BYRD. Do you not feel that, as a man who has had 21 years of experience in this great organization, to continue to depend upon inherent Executive power might undermine the legitimacy of the FBI at a time when the distrust of Government is very widespread?

Mr. KELLEY. Senator, I was never uncomfortable under the provisions under which I worked for 21 years. Perhaps I was unaware of any need; I know of none now and feel that I could work comfortably in a continuation of the atmosphere and the regulation which I did before. But again, in the wisdom of Congress, I would certainly cooperate insofar as determining whether it is necessary.

Senator BYRD. But, Mr. Kelley, you worked for the FBI at a time when it was headed by a very unique man, a man who was a Director *sui generis*, and I would venture the opinion—although I did not serve in Congress many of the years during which Mr. Hoover was the Director of this great organization—that the image of Mr. Hoover, his record of performance in removing the FBI from politics, the high regard and profound respect for him held by not only Members of Congress but by the public in general, created a different atmosphere at a different time and under different circumstances and conditions from those which we are now experiencing. That period of nearly half a century has passed. Of course, you have every degree of confidence in your own ability and in your own motivations and in your own attitudes toward the proper functioning of this great organization. But from the standpoint of the benefit of the organization itself, I do not believe that ever again such powers should be vested in one man as were vested in Mr. Hoover without some statutory authority, without appropriate congressional oversight. I think it would be taking chances far too risky for the future survival of the liberties of our citizens and the constitutional form of government under which we are privileged to live.

There won't be another J. Edgar Hoover, whether we liked him or whether we did not like him. I think most people felt that the FBI was in good hands, that Mr. Hoover would not subordinate this great intelligence-gathering operation to the wishes of any political administration, or of any political party. But we are living in a different time and there is a great lack of confidence in all areas of Government.

So from the standpoint, not as to whether or not you were comfortable under the setup as it existed under Mr. Hoover, not with regard to how comfortable you may be if you are confirmed to become Director of the FBI, or how comfortable you would be in working under this framework of nonlegislative authority, but from the standpoint of the future good of the FBI and the future protection of the liberties of all our citizens, how do you feel about the necessity for statutory authority which would more clearly delineate the framework and guidelines by which this great organization should conduct its intelligence-gathering operations?

Mr. KELLEY. Senator, I yesterday indicated a willingness and a desire to go into the matter of an oversight committee. I reiterate that. I think that to a great extent, that will iron out some difficulties and enable us to do this within the framework of the climate you describe

as most desirable. If it is determined through discussions that legislation is the only answer, that is a determination which I think can well be made and I very willingly enter into any discussion regarding that.

I don't feel by any means that I, were I designated, would be the replacement for Mr. Hoover; I am the successor. I feel, however, that I have the same strong feelings about the rights of the people and about the need for maintaining the security of this country, and I assure you, I would religiously follow and carefully scrutinize the operations of the FBI to assure this. But that, as you say, is not the complete answer. There might be some who still, although I might feel comfortable, they may not. So I would be willing to discuss it, sir.

Senator BYRD. Well, Mr. Kelley, would you not go further than to say merely that you would be willing to discuss it? Your dedication to the FBI as evidenced by your long service in that organization, your acknowledgment that the intelligence-gathering operation for this organization presumably derives from some untested clause in the U.S. Constitution, your recognition of the perilous and uncertain times in which we live, your awareness of the potential for good as well as the potential for bad in this great organization, your knowledge of recent history in which the FBI was misused, to the detriment of the organization itself, to the detriment of the morale within the organization, and to the impairment of its image in the public mind—with all this in view, do you not feel that in order to provide a proper safeguard in the future against the misuse of this organization, with its 20,000 employees, its millions of files on American citizens, that there ought to be some legislative framework which would form the basis of continuing congressional oversight of this organization? Would it not be for the future good of the organization itself, as well as for the safety of the country and the people of this Nation?

Mr. KELLEY. I would say that codification of these matters would, in all probability, assure the FBI of a direction and a reference point. Senator, I am, again, most eager to do the best job I can. If this be the recommendation that will emerge insofar as our deliberations, I would go along with it. I am not by any means going to think, I am not going to be of the opinion that whatever I think or say should be etched in stone. I am willing to talk this over. I see no objection right at this point. I would like to have the opportunity to look it over and to decide and give you the benefit of an honest opinion. I can't give you one at this point. I see no objection to it at this point.

Senator BYRD. Well, aside from that, though, Mr. Kelley, suppose you were sitting here on this committee, and Robert C. Byrd were appointed to be the Director of the FBI. Robert C. Byrd has had no previous law enforcement experience, he has had no experience in intelligence-gathering operations, he is merely a good politician, a friend of the people in the White House—a good party man, et cetera. How would you feel about the future of this great organization, after 21 years, under that kind of leadership? Would you not have a better feeling if there were a statutory framework guaranteeing continued congressional oversight of this intelligence-gathering activity. Mr. Kelley won't always be Director of this organization, and although he is willing and glad to cooperate and all of that, what I am seeking here is your very best professional judgment as to the necessity and the advisability and desirability of having continuing congressional over-

sight of this organization's operations based on an appropriate legislative statutory framework which would guarantee a continuing and proper oversight.

Mr. KELLEY. Yes, sir, I think that oversight is most desirable, and I would be very responsive to such a system and to protect the country at large from the establishment of venal leadership in the FBI. I would do anything to do that, yes.

Senator BYRD. You see the picture a little differently when it isn't Mr. Kelley who is being considered for confirmation, but rather, a politician who knows nothing about law-enforcement activities and whose best credentials are his friendship and loyalty for a particular political party in control of the White House.

Mr. KELLEY. Yes, I feel that—

Senator BYRD. That creates an entirely different picture, does it not?

Mr. KELLEY. Yes.

Senator BYRD. Well, now, would you cooperate with this committee or any other committee in devising the appropriate language to provide statutory authority in this regard?

Mr. KELLEY. Yes, sir.

Senator BYRD. Mr. Kelley, if you were confirmed, to whom would you be responsible?

Mr. KELLEY. The Attorney General and the President.

Senator BYRD. The Attorney General and the President?

Mr. KELLEY. Yes, sir.

Senator BYRD. Suppose you get crosscurrents of conflicting requests from the two? To whom will you then be responsible?

Mr. KELLEY. I can't visualize that, but I would imagine that I would have an appeal that I could make to the President for consultation and it would be to him that I would ask for my final response to a question in my mind.

Senator BYRD. Do you feel here again that some statutory guidelines would be helpful to a Director who was placed in that very predicament?

Mr. KELLEY. Yes, sir.

Senator BYRD. If the Director of the FBI is responsible to the Attorney General, does it not limit the ability of the Bureau to investigate into areas that the Justice Department does not want it to get into? For example, the Justice Department limited the investigation of the FBI in connection with the *Watergate* case to possible violations of the IOC statute. Now, if the FBI is responsible to the Attorney General, does this not limit the ability of the Bureau to investigate freely into areas that the Attorney General does not want the FBI to get into?

Mr. KELLEY. I think there should be no restriction on the investigation so long as it is directed toward the establishment of a prosecutable case. And if this be counter to what the Attorney General might desire, the FBI still should continue.

Senator BYRD. Here again, do you feel that some legislative guidelines would be helpful to the Director? Take, for example, Mr. Gray. He felt inhibited against getting into areas other than possible violations of the IOC statute.

Mr. KELLEY. I think that to prevent the situation you spoke of, that there might be, that there is a need. If that is a specter which con-

cerns our citizens and Congress, yes. Insofar as guidelines, the guideline is conduct your investigation and I know of no bar presently existing which would prevent me from proceeding. Now, if it might prevent somebody else, I can't say, but it will not prevent me.

Senator BYRD. To whom does the Director of the FBI have a duty to protest if he feels that a politically motivated Attorney General in any administration is unduly hampering an FBI investigation in any way?

Mr. KELLEY. I can only answer it subjectively. I would go to the Attorney General and voice my protest and not having the satisfaction I would feel necessary, I would go to the President.

Senator BYRD. Then where would you go?

Mr. KELLEY. If I got no satisfaction from there, I would go out.

Senator BYRD. So you have three alternatives: To go to the Attorney General, who is a motivated political animal under any administration; the second is to go to the President who might have reasons of his own for not wanting an investigation pressed; the third alternative is to go out?

Mr. KELLEY. Yes.

Senator BYRD. So under the present setup, you would not consider the Congress as an alternative place to lodge your protest?

Mr. KELLEY. That is right.

Senator BYRD. Again, would it not be well, then, for the Congress to provide some kind of legislative framework which in turn would insure the kind of congressional oversight that would give a Director assurance that he would have another place to go if confronted with the problem that I presented to you.

Mr. KELLEY. I am not aware of how this would conflict with the separation of powers and that the executive branch designees would be, could possibly appeal, other than through the news media. I simply can't answer your question knowledgeably.

Senator BYRD. Then at the present time, do you know, Mr. Kelley, whether or not the Director of the FBI has access to a congressional oversight committee or subcommittee in order to either seek direction for the Bureau or to express concern with regard to undue restrictions placed upon the Bureau by the Justice Department or by the President?

Mr. KELLEY. You say is there any present system whereby—

Senator BYRD. Is there any present subcommittee or committee to which—

Mr. KELLEY. I know of none. I thought that this was entirely a new development, that we would have consideration given to the establishment of an oversight committee.

Senator BYRD. If a congressional subcommittee were established, the primary responsibility of which would be to conduct constant oversight of the FBI, do you feel that this would help to insulate the Bureau from possible political pressures being exerted on the Bureau by a politically motivated Attorney General or by a President?

Mr. KELLEY. I think that it would stabilize the position and I am confident it would diminish the possibility of such pressures.

Senator HRUSKA. Would the Senator yield at that point and on that subject?

Senator BYRD. Yes.

Senator HRUSKA. Of course, the Congress has inherent oversight powers that are exercised constantly. They are powers which have been appealed to by the original Director of the FBI from time to time.

Now, then, the Senator is very dedicated to the idea that we stabilize and improve the FBI if we can and restore whatever confidence it may have lost. But may I respectfully suggest that the nominee here says he would appeal first, if there were political interference or some other objectionable practices occurring, that he would go to the Attorney General; and if he didn't get satisfaction, he would go to the President. And then he would go out of office if he found no recourse in those two alternatives. Where is the law that says you should go to the Attorney General? And that you should go to the President? Is there a law that prescribes routine and guidelines and limitations and so on? Or is it not inherent in the oversight that the Attorney General has, because the Bureau is in his Department, is it not inherent in the President to have oversight generally in matters of moment of that kind? And would not that same process apply with reference to the powers of oversight of Congress? And that you could come to the chairman of this committee, you could come to the chairman of the Appropriations Committee? Or in session, when you meet there for the purpose of justifying your budget, saying, now, Mr. Chairman, here are some matters that have come to my attention in the past year and I would like to counsel with you about them, or at least advise you, and then you can do what you choose?

In other words, I just wonder if the creation of statutory powers would not result in a disadvantage, because then it would set the limits on oversight, whereas we have no limits now. Every committee of the Congress has that inherent power, and all we have to do is to try to invoke it. Help has always been forthcoming, in my experience, whenever Mr. Hoover came to us and told us of something that he could not do or would like to do or that he complained about.

Is there any possibility in that direction, Mr. Kelley?

Mr. KELLEY. I would be happy to go to that course, where I would go to the Attorney General, the President, and then have the capability of going to Congress in an oversight committee.

Senator HRUSKA. You have that capability.

Mr. KELLEY. Good.

Senator HRUSKA. Anybody in that position has it.

Senator BYRD. May I say to the distinguished Senator from Nebraska that we have been exploring the need for a statute where no such statutory authority exists. We acknowledge that under Mr. Hoover, we trusted these things to him. I sat on subcommittees when he appeared before them and we o'oh'd and we a'ah'd and we were big-eyed and swelled our chests with pride in his performance. I was one of his best supporters in this country. But we don't have Mr. Hoover any more. Congress was content to place its trust in him and there weren't many questions asked as far as I am concerned. His budget request, as far as I was concerned, and I think as far as most Members of the Senate and House were concerned, was pretty much sacrosanct. We gave him anything he wanted. We trusted him.

But we are living in a different time now. I would not have felt the same about Mr. Gray, with all due respect to him.

So the Senator has asked the question, where is the law? That is precisely the question that this Senator has been asking. Where is the law? Should there not be a law? Yes, as Senator Hruska has said, yes, if questions arose, the Director would go to the Attorney General, he would go to the President, or he would quit his job. Mr. Gray didn't do this. We have seen the evidence of one Director who did not do these things, who did not come to this committee, who did not come to the Congress and say, I have problems here, what are your directions, what is your advice, what support can I get here?

We saw one Director who didn't quit his job because of the frustrations. He stayed on in the job, even in the face of these difficult and conflicting pressures.

So while I take a back seat to nobody in my support of the FBI, in my admiration for Mr. Hoover, I think that this period provides the Congress with an excellent opportunity and one which it should seize to determine just precisely what is the role of the FBI, what ought that role to be, and what is the statutory authority and, there being none, should there be? Should there be guidelines and standards by which we determine which case should be a "major special?" Should there be guidelines by which we determine which case shall get the "full court press?" Should there be guidelines to indicate what information is to be gotten from intelligence-gathering operations? How will it be stored? Where will it be stored? How will it be disseminated and to whom?

These are major questions and we are living in a different era. We are not in the horse and buggy days anymore, much as I would like to go back to them in some respects. We are living in a new era. I think that for the good of the FBI, we ought to determine these questions here and now and I feel that we have an excellent opportunity in the situation of your appearing before this committee, you being one who has had 21 years of service in the FBI. Certainly you have an insight into its obligations and I think you can provide this committee with excellent advice.

It certainly would not be my desire to hold up your confirmation to develop this role, but I would hope that after you are confirmed, as I believe you will be confirmed, that this committee or some committee ought to conduct a very thorough study in detail for the first time in the history of the FBI, of this organization. And I would hope that you could make a valuable contribution in that regard.

How much independence would you like to see the FBI have from the Justice Department and from the President? How much do you think it ought to have?

Mr. KELLEY. Freedom from any pressure, political, or any other illegal and other than that, I know of no need for independence. I think that there should be an open exchange between the FBI and the Department insofar as discussion of the laws.

Senator, I don't know of any greater independence that is needed. I had never encountered any restrictions. Again, I never felt uncomfortable while I was in the FBI about the Department.

Senator BYRD. The Central Intelligence Agency, which is our chief foreign intelligence-gathering agency, has its authority based on congressional statute, not in the Constitution. In the National Security Act of 1947, Congress explicitly deliberated on the needs for and the

basis of the establishment of a foreign intelligence agency in the CIA. But the Congress never did anything like this with respect to the FBI. What is your reaction to this?

Mr. KELLEY. I don't know the reason why this was promulgated for the CIA. I assume that the FBI was never placed under this type of regulation because there apparently was no need. As you stated, Senator, there was complete confidence in the directorship, the stewardship, and the administration by Mr. Hoover. And I guess that this just didn't occur to anyone, they didn't feel the need for it.

Senator BYRD. Congress has passed statutes on espionage, subversive activities, domestic violence, but these statutes do not define the scope and the rationale for intelligence gathering by the FBI. Would you care to state again your feeling that in the light of this, Congress, for the future good of the FBI if nothing else, ought to explore statutory language from which such authority would derive?

Mr. KELLEY. I thought that this was inherent within the constitutional provision of the Presidential directive to protect the country and that the gathering of intelligence was, to a great extent, preventive and in turn presented cases of prosecution. I say preventive in the sense that there are, and we discussed that yesterday, matters which come up from time to time which indicate the need for checking into various situations and movements and people. Were you to wait until you have a prosecutable case, until you had a situation which generally evolves from a criminal case—that is, after the fact—you might well be caught completely unaware of the situation. So I just construed intelligence as being a part of that general constitutional directive.

Senator BYRD. And yet the same rationale did not carry over to the establishment of the CIA. The Congress saw fit to establish this by statutory authority—that organization.

Mr. Kelley, I have introduced legislation, S. 1500, which would provide for a 7-year tenure of office for the Director and the Deputy Director of the FBI. My bill would also provide for the FBI's establishment as an independent agency.

First, with respect to the establishment of the Bureau as an independent agency, I have no firm opinion as to how this would be done. I am not sure that it ought to be done. But in the light of the recent experiences of the FBI, it seems to me that some action ought to be taken to safeguard the Bureau's freedom of action in connection with an investigation so that it would not be hampered either by lack of instruction or because of instructions issued by a politically motivated Attorney General. I say this not with respect to any particular Attorney General, but any Attorney General is going to be a politically oriented cabinet officer, whether he is a Democrat or a Republican. It seems to me, and I am sure the thought has occurred to others, that there ought to be some degree of independence for the Bureau so that it will not be a political arm of the White House and it will not be a political instrument of the Attorney General. So my bill would provide for an independent agency. What is your advice in this regard?

Mr. KELLEY. I have been chief of police for 12 years, and of course, traditionally in police circles, the prosecutive branch is separated from the investigative. The situation has been a very healthy one. I certainly see no objection to this.

I would, however, want to know what was the executive intent behind the union of the Department of Justice and the FBI. I frankly never considered this in the past. It again was something that was never uncomfortable and I can visualize there possibly would be some economic reasons for the merging of them. I just am unprepared to answer you very well. I would see no disadvantage to it, however, so I would say I would be, I would like to have more time to study it, to find out what would be the basis for these things.

Senator BYRD. Well, Mr. Hoover was a man who had served far longer than any Attorney General who came upon the stage of history during the 48 years of Mr. Hoover's tenure. He had had far more experience than any Member of the Congress, certainly in his later years of service, and his image was such and his prestige was such that I don't think he looked up to very many Presidents. He could exercise that degree of independence, I suppose, if he chose to do so, that we would like to see any Director exercise. But how can this be assured under the present setup?

Mr. KELLEY. I suppose it is just about the same way that you would choose any administrative head: Choose carefully and cast aside those who do not appear to have the strength and the intelligence to do the job properly. Then, of course, there are the legislative possibilities. That is not the entire answer, because there could still, within the legislative restrictions, be the administrator who would succumb to this type of thing.

I think that the choice of the person is the greatest of the responsibilities that this body right here, for example, has, insofar as curtailing the activities such as you describe. You must choose carefully and I mentioned yesterday, I come to you with the knowledge of the tremendous responsibilities of this organization, with a deep affection for it, and I am most willing to answer any question you may have. I feel that if you did not do so, you would be derelict in your duty. It is a tremendous responsibility. I feel it; I know it.

Senator BYRD. Well, Mr. Kelley, the same thing should be said with respect to any office to which the President makes an appointment. The President should choose with great care. But that does not go far enough with respect to the FBI, in my judgment. Who is to know what kind of man you are going to turn out to be? I have to base my judgment on your record and on your answers to questions here. But who is to say whether the President a year from now will be shown to have made a good appointment? I think he will be in your case. But we have to look beyond your tenure of office.

What, if the FBI is to remain as part of the Justice Department, what is to prevent a politically-oriented Attorney General from attempting to use the Bureau for political purposes in the event the President does not appoint the right man and the Senate confirms the wrong man?

Mr. KELLEY. I don't know.

Senator BYRD. This is what I am seeking here, that degree of independence which would assure that the FBI, under the wrong Director, under the wrong Attorney General, under the wrong President, will not be used as a private police force or White House secret-police force, a political instrument of the party in power at a given time.

What is your judgment as to the tenure of office—the Director and the Deputy Director should have? Do you believe there ought to be a set tenure, a 4-year term, 7-year term, a 15-year term, a term without possibility of reappointment, a shorter term with the possibility of reappointment, or a situation in which there would only be one appointment but which required reconfirmation at some point? What would be your views on it?

Mr. KELLEY. I first, in consideration of this possibility, thought that 9 years would be the proper term. I do feel that there is a greater independence achieved through tenure. I do feel that in my own case, where I have for the past 33 years had only a day-to-day type of tenure has in turn been very comfortable for me. I feel that if you err, you are going to be caught up and it is much easier for the administration to get rid of a person who does so. In balancing them, however, I feel that there should be tenure. I have not settled in my own mind about the number of years.

Senator BYRD. Do you feel that a greater degree of independence on the part of the Director would be assured and that less likelihood of an attempt to endear oneself politically to an administration or to a Presidential candidate, would be best assured if a Director could not be reappointed? Would the good that would result from this outweigh the possible harm that might result if a Director in such a position would become authoritarian or feel that he could become a law unto himself?

Mr. KELLEY. Again, I think a great deal should be said for the fact that this man should be chosen very carefully and that this committee has a tremendous duty to choose carefully before confirming. I don't understand the need for saying that after the term he cannot be reconfirmed and continued. I do feel that it does give him a measure of independence were he so inclined to not succumb to political pressure. However, I suppose I assume too much in saying that through a selection process, you should be able to get the right man. You feel that that possibly isn't the answer. I frankly think it is. I would not feel uncomfortable to continue myself on a day-by-day basis. I feel that is a responsibility that as a public official, I must have, that if I do wrong, I get out and you can certainly accept that as my principle. But if some feel more comfortable and more independent and free from the taint of political pressure under tenure, all right; that is the cushion that they should have.

Senator BYRD. I don't think that gets to the basic need here. Mr. Kelley. What would you think of having a 15-year term, let's say, with reconfirmation necessary midway in the term, reconfirmation by the Senate? Not reappointment, but reconfirmation.

Mr. KELLEY. I would see—I can't think of anything particularly wrong with that. That is quite a length of time. But on the other hand, it is an accumulation of experience in the meantime which would be helpful.

I am in my 12th year being police chief. I can't say that I feel that is too long. Mr. Hoover was for many more years than that and he remained just as steady and steadfast throughout that entire period.

I don't think, in other words, it is the term, necessarily, but if that be a comfort to some, all right.

Senator BYRD. Would you think that 7 years would be too short a term?

Mr. KELLEY. I am inclined toward 9.

Senator BYRD. Why 9 in preference to 7? Why not 11?

Mr. KELLEY. I don't—I can't tell you. I really don't know.

Senator BYRD. Do you feel, Mr. Kelley, that a 7-year term would not provide the incentive—

Mr. KELLEY. Would not what?

Senator BYRD. Would not provide the desirable incentive to a Director and would not give him enough time to get into the job and to get his feet into the ground, so to speak? Is this why you think that 7 years would be too short and you have opted for 9?

Mr. KELLEY. I would recommend that if any candidate for this post ever told you it took him 7 years to get going, you had better look for a new one.

Senator BYRD. Well, let me respond to that. You show me the Senator who, in his first 6 years, really got going. Not many of them. It takes a while, I should think. It might not take you that long, because you have already had 21 years of experience in the Bureau. But be that as it may, you feel that 7 years is too short?

Mr. KELLEY. Yes, sir.

Senator BYRD. I would like to—can you once more address yourself to the question as to whether or not a Director should be eligible for reappointment? Let's say with a 9-year term?

Mr. KELLEY. With a 9-year term?

Senator BYRD. Yes.

Mr. KELLEY. And this would mean that he would, after the 9, be eligible another 9?

Senator BYRD. Yes, he would be eligible for—

Mr. KELLEY. I would say that were I to continue with this, I would say that this could be, after the 9 years, be shortened, because you can have in such an event someone who could well go into an age at which time he would be unable to do the job, possibly, as he should. And it could well be a health matter. So I would have to say that this should be reduced. How much, I don't know. But I think after that, it could well be that it could be reduced considerably.

Senator BYRD. And you are saying that a prospective Director could serve a 9-year term and then be eligible for reappointment to a lesser term, say 5 years or 7 or 3 years?

Mr. KELLEY. Yes, sir.

Senator BYRD. Would you suggest that he also be eligible for a third term?

Mr. KELLEY. I can't give you any real clear answer to that. It could well be that you could have a man at 40, which would mean that he could continue for as much as 20 years. And I could well imagine that such a person could contribute considerably. There is a general feeling in police circles that you can be chief of police too long and you need some new blood so that there can be innovative ideas and readjustments and the avoidance of some of the things that stereotypes the organization. I would want to be very careful before I would say go to any period such as over 20 years.

In the FBI, you could serve and be eligible for retirement after 50. One of the greater comforts for the agents is the fact that they are en-

titled after 20 years service to retire at 50 and I think that right within that itself is a degree of independence. But when you go well beyond the 50, I think you are possibly going to run into problems whether you would authorize a man to go 20 years or more.

Senator BYRD. With respect to the Bureau's relationship to the President, should the Bureau provide the President with confidential files or conduct investigations at his request in all circumstances?

Mr. KELLEY. In all circumstances?

Senator BYRD. Yes, sir.

Mr. KELLEY. Were it to be something that would be illegal, no; but there could be investigations conducted at his request, yes.

Senator BYRD. Well, should the Bureau provide the President with confidential files upon request?

Mr. KELLEY. On occasion, yes sir.

Senator BYRD. You qualified your answer. Would you care to elaborate? You said upon "occasion."

Mr. KELLEY. Well, perhaps I made a qualification which I really should not have made. I don't know of material which should be investigated and prepared by the FBI which could not be given to the President upon request. After all, he is the Executive and in charge of the FBI.

Senator BYRD. Now, how would you respond to this question: Should the FBI provide confidential files upon request of anyone else at the White House, anyone in the top echelons at the White House, anyone other than the President?

Mr. KELLEY. I would certainly request that they make a written request and it would go through the Attorney General.

Senator BYRD. Now, that who make a written request?

Mr. KELLEY. Other than the President who might be requesting these; a member of the executive branch of the Government.

Senator BYRD. And you are saying that you would supply confidential files to a person other than the President at the White House if such person provided the request in writing?

Mr. KELLEY. No, I say he should make the request and it should go through the Attorney General and then down to me and if I felt that it were not proper, I certainly would not supply it to them.

Senator BYRD. Now, why would you supply anyone at the White House other than the President with confidential files, whether it be in writing or whether it might be through the Attorney General or not?

Mr. KELLEY. I am assuming that the directive to have the files, sir, came from the President to this person and down through. If someone just independent of the President wanted a file, no.

Senator BYRD. Are you saying, Mr. Kelley, that you would operate under the same "presumption of regularity" as did Mr. Gray?

Mr. KELLEY. Oh, indeed not.

Senator BYRD. Then would you like to think about your answer?

Mr. KELLEY. Perhaps I don't know the question properly.

Senator BYRD. Let me see if I can rephrase it.

Would you, under any circumstances, supply confidential FBI files to any person at the White House other than the President of the United States—

Mr. KELLEY. No, sir.

Senator BYRD [continuing]. If that person made the request in writing and the request came to you through the Attorney General?

Mr. KELLEY. No, sir.

Senator BYRD. Then you have changed your position?

Mr. KELLEY. No, sir, I thought that your question was were the President to request it through a member of his staff and then go down. But it would be going to the President himself.

Senator BYRD. What you are saying, indeed, is that you would only supply confidential FBI files to the President of the United States, period?

Mr. KELLEY. Yes, sir.

Senator BYRD. And it would have to be over his signature?

Mr. KELLEY. I don't know the protocol.

Senator BYRD. Or through his personal request to you?

Mr. KELLEY. Yes, sir.

Senator BYRD. But you would not under any circumstances supply raw FBI files to a White House aide no matter how high his position may be in the White House?

Mr. KELLEY. That is correct.

Senator BYRD. Even though he made the request in writing and it came to you through the Attorney General of the United States?

Mr. KELLEY. That is correct.

Senator BYRD. There has been some discussion as to the need for a blue ribbon panel to aid the Bureau in pursuing its future directive. What are your feelings with respect to the merits of the proposal?

Mr. KELLEY. I am satisfied with the oversight committee. I would not sponsor the so-called blue ribbon type of review panel.

Senator BYRD. Do you feel that the FBI should continue its dual function of carrying out domestic intelligence-gathering operations as well as criminal law enforcement work?

Mr. KELLEY. Yes, sir.

Senator BYRD. Is there any advantage to overlapping these two functions within the Bureau's structure, or do you feel it would be more beneficial if they were separated within the Bureau?

Mr. KELLEY. The advantage is that there is an interchange on many occasions of information. There is an advantage in the presence of both. They on occasion supplement one another where there is a particularly crying need for additional personnel. I think that economically, it is sound. Administratively, it is not difficult.

The disadvantages of it—I can't at this point give you any disadvantages. There has been in the field of police work, for example, a hue and cry that the traffic unit of the departments be separated from the patrol and investigative units. On the other hand, many things are done to supplement the effectiveness of the police department through the traffic unit and they work well together.

I realize that this is a kind of far-fetched comparison, but they are all officers enforcing the law and I see nothing in the joining of them that makes it more difficult.

Senator BYRD. What is the practice in other countries? For example, in Great Britain? Are these two roles performed by one agency or one head or is there a separation of the two functions?

Mr. KELLEY. Senator, I can't give you a good answer.

Senator BYRD. Do you feel that this is a matter that ought to be explored by the Congress as to whether or not the FBI should continue

with both roles or whether or not within the FBI, those two functions should be separated?

Mr. KELLEY. I understand it is being explored at this time, and Senator, I would be, again, willing to discuss it and to give my opinion, not necessarily the one I have given now. But I certainly would be willing to discuss it with the other administrators of the Bureau to find out, is there a real problem? I know of none.

Senator BYRD. Speaking with reference to "major special" cases and so on, Mr. Kelley, I would assume that it is a matter of great importance with respect to the determination of what cases are going to be given priority and with respect to the allocation of manpower and so on. What—who makes the decision as to whether or not a case will be a "major special"?

Mr. KELLEY. In the field offices, it on many occasions is the supervisor who supervises a squad of men and a bloc of violations. There might, however, be a special which is indicated as a special because of the urgency of quick submission of a report. I have known of some civil rights investigations which have taken precedence and practically everyone in the office has been called upon to assist in it. The priority is determined generally by, again, the overall need for quick handling.

Senator BYRD. But who determines this? Who makes this determination? For example, Mr. Kelley, Mr. Gray apparently made the determination that the *Watergate* case, that the possible violations of the IOC statute, would constitute a "major special" and in this case would be given a "full court press." He made that decision, based on his testimony. He quickly recognized the major implications involved here and he quickly began making telephone calls and issuing orders that this was going to be a "major special." But he did not reach that same determination with respect to the ITT investigation.

Now, who makes this determination as to what case will be a "major special"—the Director, the Attorney General? Or does it vary from time to time and under different directorships?

Mr. KELLEY. I was never privy to any of the deliberations of the Director nor of the Attorney General. But I would very definitely assume that they would have a part in determining priorities of some cases. Yes, they could have made such a determination.

Senator BYRD. "They" being?

Mr. KELLEY. The Director and the Attorney General.

Senator BYRD. Well, should not this decision definitely rest somewhere? Should there not be standards or guidelines by which such a determination would be made?

Mr. KELLEY. I would certainly not object to any guideline. Usually, they are so self-evident that you have no problem of determining it.

Senator BYRD. Thirty-nine FBI agents have reportedly been assigned to Embassies around the world under the title of legal attachés since October 1970. They reportedly have covert intelligence-gathering missions as well as acknowledged police liaison duties, operate independently from Ambassadors and Embassy personnel and from the CIA, according to the Washington Star-News, which reported on June 13 that one of these agents intervened with the U.S. Ambassador in Beirut, Lebanon, on behalf of Robert L. Vesco, who was attempting to gain control of a bank there. The article commented as follows:

The assignment of FBI agents to a number of countries by Hoover in October 1970, ostensibly on the authority of President Nixon, has long been a sore point with the CIA and State Department, where such FBI activities are considered both illegal and of marginal value.

How do you feel about such international intelligence-gathering operations by the FBI?

Mr. KELLEY. I have known of cases, Senator, where the agents in foreign assignments have assisted in criminal investigations, inquiring as they do of the local police about various matters in which we have an interest. Insofar as their intelligence-gathering need, insofar as their general administrative operations, the control that is exercised over them, I frankly don't know enough about it to be able to tell you. But I know that as an agent in charge, I have benefited from time to time from criminal investigative help.

Senator BYRD. What do you think should be the relationship between the CIA and the FBI?

Mr. KELLEY. I think there should be a good working relationship among all Federal investigative groups. As to what should be the general delineation of duties and investigative limits, that presumably is set out to some degree. I don't know what those lines are. But I feel that there should be a fairly clear line made as to what we do and what they do to avoid duplication.

Senator BYRD. What other governmental agencies are conducting domestic intelligence-gathering operations?

Mr. KELLEY. I presume some of the military investigative groups—ONI, OSI; as a matter of fact, I don't even know of all of them. Then there is the National Security Council. You know, having been 12 years involved in criminal matters almost exclusively, I don't have the background of this that I should have.

Senator BYRD. We referred a little earlier to the lack of standards by which the dissemination of information is made, information that results from an intelligence operation by the FBI. What are the standards? Who determines what intelligence is needed, when it is needed, why it is needed, how it will be secured? Who determines how it will be stored, where it will be stored, by whose authority such information will be disseminated? Who determines what other agencies will have access to the intelligence information gathered by the FBI? What are the standards? What are the safeguards? What are the guidelines?

Mr. KELLEY. In the first place, I don't know what the standards are. I would say that from my past experience, dissemination to other agencies was based on whether or not, first, they are authorized to receive information; and second, whether this would aid them insofar as keeping them informed or perhaps supply information which will be helpful in investigations they may be conducting.

Senator BYRD. May I interrupt you at that point? You have made references to, you used this phrase, "Whether they are authorized to receive." Now, by what authority? How do you know whether they are authorized to receive anything, since there is no legal framework here within which your organization apparently operates in this connection?

Mr. KELLEY. I construe this as including Federal investigative groups and authorized by virtue of their establishment as such. I don't know that there is any written authorization on which we can call. There may be, Senator, but I don't know.

Senator BYRD. Suppose HEW called up the FBI and would like to have some information with respect to, let's say, activists who have been operating under the VISTA program or some other program?

Mr. KELLEY. They are not authorized. They are not authorized for such.

Senator BYRD. The information would not be disseminated to HEW in response to such a request?

Mr. KELLEY. No, sir.

Senator BYRD. Who will make the determination as to whether or not such an agency request will be granted? Who makes this determination?

Mr. KELLEY. Well, the FBI, were they requested to furnish it, would deny it. That is all there is to it.

Senator BYRD. But who in the FBI would deny it?

Mr. KELLEY. They have all, I am confident, been given instructions who not to give them to as a generalization.

Senator BYRD. Who has been given instructions as to who not to give it to?

Mr. KELLEY. Well, it would be in the form of some sort of a directive that there should be preservation of the security of information and I am confident it is so sweeping that there actually is to be dissemination only to those so-called investigative agencies that I spoke of and none other.

Senator BYRD. Is there such a directive as far as you know?

Mr. KELLEY. I don't know.

Senator BYRD. I realize that you are coming back to the Bureau after a number of years away from the Bureau. Now, I interrupted your response. Would you proceed with respect to the multiheaded question that I asked regarding the dissemination of information; and also the acquiring and storing of it.

Mr. KELLEY. Sir?

Senator BYRD. Also with respect to the acquiring of intelligence and the storing of it.

Mr. KELLEY. Well, insofar as the acquiring, I think that, again, as I responded before, I think that it stems from the protective need and the storage of it through the fact that it is valuable only so far as it is maintained and it should be maintained, of course, with the sanctity, the confidentiality assured. And if there be any violations of that, they should be summarily disciplined and a question was asked yesterday about leaks of information. That should be dealt with drastically and I am inclined to say that, to be of the opinion, rather, that this is one of the worst of the violations. It is a betrayal of your trust and he should be released, he should be fired. We can't have it.

Senator BYRD. But what are the protective safeguards against dissemination of this highly classified intelligence to other agencies or other people? Who is in charge of this, the protection of these? What directions are there or what guidelines are there for the dissemination or the protection of this information?

Mr. KELLEY. I don't know of any guidelines. There might well be some written orders or guidelines and who is in charge of the protection of the information and the preservation of the confidentiality. I think it goes from the Director right on down. And each of the supervisors is, and I say supervisors—all those from the Director on down—

has a duty to maintain this. And each agent has a duty himself to advise in the event there is any infraction that he knows about. It is a department—it is a bureauwide responsibility.

The CHAIRMAN. That is a rolleall vote.

Senator BYRD. Mr. Chairman, if I could proceed for 5 minutes before going.

The CHAIRMAN. Proceed.

Senator BYRD [presiding]. Well, what are the FBI standards for determining what group will be investigated or what information is going to be elicited or how the information will be gathered? Who makes the decision as to what informant will be hired to infiltrate a group or to act from within a group?

Mr. KELLEY. Investigations are launched on the basis of the possibility of the development of a prosecutable case. There are intelligence-gathering investigations, of course, investigations which, again, help to prevent the advent of some movement or conspiracy toward the overthrow of the government through force and violence. Insofar as the development and designation of informants, actually, that is almost an individual agent's responsibility. After he has contacted and developed an informant, it is discussed with his supervisor. If it appears this informant has the proper motivation, if he is not trying to milk us of money, if he is not, for example, possibly trying to infiltrate us—if, in other words, it appears that he can be a productive informant, yes, we will go into it. But that he is not just a promiscuous choice, it is done with care. And he is thereafter contacted regularly and a continuing process of evaluation is used.

Senator BYRD. Mr. Hoover reportedly approved the hiring of student informers and potential student informers to report on campus activities. Do you feel that such informers are a justifiable FBI activity?

Mr. KELLEY. I don't know what the informants were informing about. If they were informing about activities which are prosecutable or advocating the overthrow and actually doing some criminal activities, engaged in some criminal activity, yes, I would join in it.

Senator BYRD. Mr. Kelley, the committee will stand in recess until the hour of 2:15.

Thank you.

[Whereupon at 12:10 p.m., the committee recessed to reconvene at 2:15 p.m., the same day.]

AFTERNOON SESSION

The CHAIRMAN. Let's have order.

Senator Byrd, you may proceed.

Senator BYRD. Mr. Chairman, thank you.

Mr. Kelley, Time magazine reported on May 28, 1973, as follows with respect to the morale of the FBI agents:

These men fear that their proudly independent agency has become at least in the public eye a mere tool of the White House. They privately assert that—especially after the disclosure that the FBI tapped the phones of some government officials and newsmen for the White House—many Americans will view the FBI as a potential threat to themselves.

As a former member of the FBI, do you feel that this description of the Bureau is currently accurate?

TESTIMONY OF CLARENCE M. KELLEY—Resumed

Mr. KELLEY. I do not feel that the matter of morale as described by many is really descriptive. I think that this is present, to some extent, but I don't think it is as deep as has been said by a few. I think that once there is permanency insofar as the leadership concerned is established, and they see that it is time to get down to work and do their job as it should be, that morale will be restored.

Senator BYRD. You are saying, however, that there is a morale problem in the FBI?

Mr. KELLEY. I am informed that this is true. I have talked with a few agents and, yes, they feel that there is some measure of morale problem.

Senator BYRD. Does this revolve around the revelations that have indicated that the FBI has been used as a tool to some extent, at least, for some people in the White House?

Mr. KELLEY. Senator, it has been described to me as critical of the FBI, and I didn't go into depth. I just surmised. But presumably, it has been because of some of the activities that have been revealed.

Senator BYRD. What would you do as Director to improve the morale within the FBI?

Mr. KELLEY. I plan to give the whole situation a very close review. I plan to talk with as many of the agents in charge as I possibly can, to people at the seat of government, the Assistant Directors, the other administrative heads, and to try to get at the root of the thing, if it be other than what I think it is, that can be quickly dispelled. If it is deeper, I am going to have to take some measures to correct it. I don't know what they are at this point.

I am inclined to believe that going in there and letting it be known that I want to represent the agency properly will be sufficient to at least get a good start.

Senator BYRD. How much time have you had since you were nominated by the President to actively observe what is going on in the FBI, what is needed there? How much time have you been able to spend on the spot, as it were, observing?

Mr. KELLEY. I have had no real opportunity to observe this, Senator. I have been in the building and I have on most of the occasions been in the Attorney General's or members of his staff's care. I really have not been able to make much of a review.

Senator BYRD. You have had an opportunity to talk with a good many of the FBI agents, have you, since the nomination came up to the Hill?

Mr. KELLEY. No, sir, not many. I would say maybe 10 or 15. I have known for many years some of them, and of course, I passed the time of day with them. I have not been able to talk at any length with some of these people.

Senator BYRD. During your career with the Kansas City Police Department, how did you get along with the FBI?

Mr. KELLEY. I got along very well, and I have been frequently told, and I hope it is true, that cooperation between the FBI and the Kansas City, Mo., Police Department is excellent.

Senator BYRD. Were there any problems—

Mr. KELLEY. None.

Senator BYRD [continuing]. In your relationship with the FBI?

Mr. KELLEY. None.

Senator BYRD. You stated at the time of your nomination that one of your aims as FBI Director would be to improve the relationship of the FBI with local police departments. How will you go about this?

Mr. KELLEY. The feeling has been permeating the law enforcement field other than the Federal agencies that there is some aloofness. For years, there has been a feeling that this may be one-sided cooperation and I intend to make it very clearly understood that this is a bilateral obligation, and particularly to instill in local law enforcement that we are there not only to investigate our own offenses but to assist, insofar as we possibly can, the local agencies. This can be achieved by a number of things such as training, such as the establishment of seminars, and that can be done through the FBI National Academy. Just by generally letting them know very audibly that we are joined in a venture to protect the people and enforce the law, that we are not going to stand alone and try to do this by ourselves, but together with them.

Senator BYRD. Several months ago, the Central Intelligence Agency admitted that it had provided advice to the police department of New York City and other cities on improving their intelligence capabilities. As Kansas City police chief, did you have any knowledge of this CIA assistance, either to your department or to other departments?

Mr. KELLEY. No, sir.

Senator BYRD. What do you think about the appropriateness of this CIA role?

Mr. KELLEY. I don't know what the basis of their work in this area is, nor do I know the scope of their instruction. Having been in the Midwest, I have had little contact, as a matter of fact, with the CIA.

On the other hand, I have had numerous occasions to be in contact with members of the FBI. The FBI, throughout the years, has assumed the role of the main group to assist in instructions of local police.

I just don't know what—from what stems their capability to do this nor what they teach. I don't believe that the FBI has ever gone into any measure to instruct local police in matters of national defense. We might on occasion assist in some investigation, and certainly, the general investigative efforts of any investigative body are somewhat, those efforts are somewhat similar. But insofar as the CIA is concerned, I know nothing of their entrance into the field, Senator.

Senator BYRD. Were you aware of the assistance given to the New York City Police Department by the CIA?

Mr. KELLEY. Not before I read it in some of the publications.

Senator BYRD. Does it strike you as being strange that the Central Intelligence Agency, which is by statute barred from exercising any internal security functions in the United States, was the agency that was called upon to help the New York City Police Department reorganize its data maintenance facilities?

Mr. KELLEY. I wondered at the time what was that authority, but I never did ask any questions about it and I have not talked with anybody from the CIA nor the New York Police Department about it.

Senator BYRD. Do you think that the FBI was in a position to provide assistance of that sort?

Mr. KELLEY. They could, by virtue of their expertise in this field, certainly furnish it. But I am not aware of the need of it in this particular area.

Senator BYRD. Do you feel that it was a reflection upon the "expertise" of the FBI that the New York City Police Department turned to the Central Intelligence Agency instead of to the FBI?

Mr. KELLEY. It could conceivably be some sort of a gesture of that type, but I don't know.

Senator BYRD. From your experience as police chief in a large city, how would you estimate the usefulness of the intelligence you receive about civil disorders, racial unrest, or extremist activities, from the FBI? How useful is the intelligence that you received from the FBI?

Mr. KELLEY. I think that any intelligence received from the FBI is bound to be that which is calculated to make the organization more acutely aware of what is needed and certainly, to keep any investigatory efforts in proper bounds. Police departments have been almost exclusively confined, except for the past few years, in criminal matters and it is a changing world and we are now engaged in activities which are still investigative, but on the other hand, are in different fields. So I think that there could be great contributions made insofar as letting us know how to do it and what to look for and particularly to keep within bounds. Because not only is that an impropriety, but it is also a tremendous waste of time.

Senator BYRD. But, Mr. Kelley, as police chief in Kansas City, how valid did you find the intelligence information, secured from the FBI, to be with respect to civil disorders, racial unrest, or extremist activities—how useful was it, how valid was it?

Mr. KELLEY. I can't recall anything wherein I would be critical. They, of course, would get rumors, obviously, and so described, for example, that there was to be a visitation by some violent groups, and there would be rumbles that there were going to be massive violent demonstrations, and none that I can recall actually occurred.

There has been information supplied from time to time about the possible assassination of officers. I don't know what was the value of this, because none of our officers as a result of this was slain—not one of our officers was slain as a result of it, but we could, possibly because of precautionary measures, have prevented one. We just don't know. And we on many occasions did take measures by alerting our officers incidental to this information.

Senator BYRD. From your own experience, how important and how useful are the various covert surveillance methods in securing intelligence of this kind?

Mr. KELLEY. Covert surveillances, I assume, mean the various electronic as well as the actual physical surveillance. We do not have any taps and have not had any, there having been a strict observance to the omnibus crime bill. I do know that, having had some surveillances, electronic surveillance, some taps, by the Federal Government, properly authorized, they have been very fruitful in developing criminal information and, as I mentioned yesterday in my testimony, were able to prevent one murder. Insofar as the physical surveillance—following people—yes, we have been able to establish some crimes and have had some successful prosecutions as a result.

The CHAIRMAN. That is a rollcall vote. When Senator Byrd gets through today, the committee will go over until 10:30 Monday morning.

Senator HRUSKA. Will the Senator yield for a request to insert in the hearings at this point a statement from Senator Fong? Senator Fong is unable to be here at this time due to other official meetings he must attend.

Senator BYRD. Yes.

[The above referred to statement follows:]

PREPARED STATEMENT OF SENATOR HIRAM L. FONG ON NOMINATION OF
CLARENCE M. KELLEY TO BE DIRECTOR OF THE FBI

Mr. Kelley, I should like to congratulate you on your nomination to be Director of the Federal Bureau of Investigation.

I regret that the need to attend several Executive Sessions prevented my being present at these sessions for as long as I should have liked to have been here. I have very carefully reviewed your resume and the transcript of the probing questions put to you by my colleagues.

Your frankness in responding reaffirmed my earlier impression formed at our meeting in my office. I am satisfied as to your competence and integrity to fill this most demanding position—with due regard to the need of the government to obtain information for prosecutorial purposes and to meet its security needs, while at the same time safeguarding the rights and liberties of the people of this country.

As amply testified to by the telegrams the Chairman has received from people who know you well and are fully acquainted with your work and your philosophy. I feel the President has chosen well in nominating you for the Directorship of the F.B.I. I am certain you will continue to be a credit to the F.B.I. and a leader in law enforcement throughout the nation.

Senator BYRD [presiding]. Mr. Kelley, let me simply proceed for another 3 or 4 minutes and then I will answer the rollcall and get back as soon as I can.

One of the traditional activities of the FBI Director in the past has been to issue public statements and to make speeches announcing so-called subversive or extremist groups. Do you expect that you will continue this practice of warning the American people about political groups and movements that the FBI considers to be dangerous?

Mr. KELLEY. I would certainly construe it as a matter which should be discussed with the administration of the Bureau and the Attorney General as to just what should be the substance of speeches that I make in any area condemning any group. I do think that it is incumbent upon the Bureau to be open insofar as warnings to the population about any dangerous matters which might come up. But I think it should be well researched and not be a shotgun approach just because I may feel personally that it is a reprehensible group. I don't think I am properly informed, nor do I think anyone is properly informed to make a complete decision in this regard.

Senator BYRD. If you are confirmed as Director of the FBI, what would be your attitude toward requests from the White House to appear and speak during a political campaign year; to appear and speak for clubs, organizations, and so on, if a request came to you from the White House to make such a speech in a campaign year? What would be your attitude toward such a request?

Mr. KELLEY. I would be very suspicious that it is politically oriented and were there any such showing, I would not make them.

Senator BYRD. What would be your attitude generally toward making speeches during an election year?

Mr. KELLEY. I think it is a very likely possibility that it might be so construed no matter what kind of a speech you might make. There could be speeches, however, before law enforcement groups within the profession that I don't think that construction could be given. But I think you would have to be very careful.

Senator BYRD. How would you react to any request from the White House or from either of the national committees of the two parties to supply information which could be used by political candidates—the President, for example—in a political campaign? Suppose you got a request from the White House asking for information, as did Mr. Gray, concerning criminal law enforcement in various parts of the country and that information was to be used, of course, in furtherance of the President's candidacy for reelection. How would you respond to such a request?

Mr. KELLEY. I would construe it as politically oriented and refuse it.

Senator BYRD. You have, I am sure, heard a great deal about this doctrine of Executive privilege in recent months.

Mr. KELLEY. The doctrine of what, sir?

Senator BYRD. The doctrine of Executive privilege. Would you appear before this committee or any other committee of the Congress at any time that you are requested to do so and supply information or testimony with regard to subjects that are within the jurisdiction of those committees?

Mr. KELLEY. The oversight committee—I would be responsive to them whenever they wanted me, yes.

Senator BYRD. How do you identify the oversight committee? Perhaps you didn't mean to do that. Would you appear before any congressional committee which requests your appearance to testify?

Mr. KELLEY. Yes—to testify? Oh, yes.

Senator BYRD. You would not invoke the so-called doctrine of Executive privilege?

Mr. KELLEY. I might on occasion recommend that there be a—I don't know even the procedures—that we might go into executive session for me to explain why I don't think something should be answered. But I would certainly appear.

Senator BYRD. But you would not withhold information from a committee of Congress?

Mr. KELLEY. No, sir.

Senator BYRD. Mr. Kelley, we will recess until I can return. I will try to do so shortly.

[Recess.]

Senator BYRD [presiding]. Mr. Kelley, from time to time, FBI agents will attend a meeting with a newspaper pad, perhaps, giving the impression that they are newspaper people, taking notes. What is your idea of this? Do you think this ought to be continued or ought to be prohibited? If not prohibited, do you think there should be some guidelines laid down for direction?

Mr. KELLEY. I don't know what the Bureau's rationalization is of this. We had some of the officers of our own department do this and I immediately discontinued it, with instructions that it was not to continue again.

Senator BYRD. Why did you discontinue it?

Mr. KELLEY. Because they were under a guise which would place the news media in a bad light.

Senator BYRD. Well, now, what would be your attitude toward a continuation of this practice in the FBI after you become Director if you are confirmed?

Mr. KELLEY. Unless I had some very compelling reasons, I would have the same attitude.

Senator BYRD. Well, now, if you had compelling reasons, would you permit it? Could not this information be gotten without having the FBI agent pose as a newspaper correspondent?

Mr. KELLEY. I think in most cases, yes, it can be obtained without that type of a cover.

Senator BYRD. Do you feel that this tactic serves, in many instances, to cast a bad light upon, and perhaps make more difficult the carrying out of proper assignments by bona fide newspapermen?

Mr. KELLEY. That is my reasoning in saying, it casts a bad light on them. It makes it very difficult for them if he is very possibly thought to be a policeman or an agent.

Senator BYRD. Yesterday, in answer to a question by Senator Hart, you made reference to the matter of oversight. I am not sure that I can recapture the true context of the colloquy in which you answered this question, but I shall draw this extract from your statement of yesterday.

This matter of being an administrator in police circles and in the FBI is one of balance. I think that first, insofar as balance with the political world, that it can be achieved through an oversight group which is restricted, controlled, responsible, and thoroughly cognizant of the need of the confident nature of the Federal Bureau of Investigation's work, and I feel that can be achieved.

Would you elaborate on that statement as to its intent?

Mr. KELLEY. On occasion, an investigative body may not be completely aware of some matters which may have an impact and they are not knowledgeable, for example, possibly of legislative intent. Their field is investigations and unfortunately, from time to time, we have some investigators who are so eager that they might conceivably, for example, violate civil rights—inadvertently, but nonetheless, this may be the result. Or they may in their eagerness even violate the proprieties of an investigation as set out by judicial decisions. I seriously feel that this is inadvertent and due many times to eagerness. I would say that counseling with this committee would give us a good review of our operations, of our procedures, and keep a balance which would be advantageous to everyone. I again subscribe to this type of a review and would be very cooperative in such a venture.

Senator BYRD. Your reference in the extract which I read was to an "oversight group." Just now, you have used the phrase "not knowledgeable of legislative intent."

Now, in your reference to the oversight group on the other day, did you have in mind a congressional oversight group or some outside oversight group?

Mr. KELLEY. Congressional.

Senator BYRD. Well, if it is a congressional oversight group, would not it be presumed to have knowledge of legislative intent?

Mr. KELLEY. Yes, sir.

Senator BYRD. Then why do you put in this caveat today, "not knowledgeable of legislative intent"?

Mr. KELLEY. The officer may well not be and it could be very well described by the legislator, the purpose behind it. There could be some explanations, and certainly, a rapport established so that we will be better informed.

Senator BYRD. Well, now, if it is a legislative oversight group, would you not feel that it is cognizant or certainly ought to be assumed to be "cognizant of the need of the confidential nature" of the FBI's work?

Mr. KELLEY. I am confident they would be, yes.

Senator BYRD. Now, when you refer to, to use your words, an oversight group which is "restricted, controlled, and responsible," why do you use those adjectives in referring to a congressional oversight group? Would you not think that congressional committees are responsible?

Mr. KELLEY. I do.

Senator BYRD. What do you mean by "controlled"? "An oversight group which is controlled." What does this mean in terms of the legislative oversight?

Mr. KELLEY. I don't think that it should be a very large group and that is the context in which I use that word.

Senator BYRD. Why do you use the adjective "restricted"? Why do you speak of a restricted group?

Mr. KELLEY. Probably the same context.

Senator BYRD. In other words, you are saying it ought to be a legislative committee or a subcommittee, a standing committee or an ad hoc committee which is controlled by virtue of its numbers, the number in its makeup? It is restricted to, would you say—what do you mean? Are you restricting it again in terms of its numbers or in terms of its subject matter?

Mr. KELLEY. Not in terms of its subject matter. I was thinking there could be matters of almost any type that could be discussed in this type of review.

Senator BYRD. So you have no concern or fear with respect to a duly constituted congressional committee exercising oversight or an over-view role—this does not cause you any concern?

Mr. KELLEY. No, sir.

Senator BYRD. You would welcome oversight by a congressional committee or subcommittee?

Mr. KELLEY. I would welcome it.

Senator BYRD. Do you feel, Mr. Kelley, that a subcommittee of the Appropriations Committee—we got into this area earlier today, but I want to be sure I understand you—the subcommittee of the Senate Appropriations Committee which has oversight over the CIA is not a statutory subcommittee, but it grew up out of practice, I suppose. Do you not feel that a similar appropriations subcommittee which would exercise oversight, continuing oversight, over the operations of the FBI would be invaluable?

Mr. KELLEY. I think that an oversight committee would be invaluable. As to how it is constituted, I would leave that up to the proper committee. I could work under this very gracefully.

Senator BYRD. I seem to recall that that subcommittee is made up of the three top ranking Democrats and the two top Republicans on the

full committee. I am not confident as to this. But in any event, it is made up of the very senior Members on both sides. So you would have no comment in opposition if such a subcommittee were to deal with the FBI?

Mr. KELLEY. No, sir.

Senator BYRD. Would you describe your duties in connection with the Democratic and Republican national conventions last year?

Mr. KELLEY. I was called to the State of Florida by the Governor to participate in a so-called review committee, consisting of, as I recall it, five members, three of whom were police officers. One the sheriff of Wayne County, William Lucas; superintendent of the Highway Patrol of New Jersey, Dave Kelly; a gentleman who is, I believe, attached to the Crime Commission of the State of Pennsylvania; and another who was—I have forgotten his name, but he is an authority on the administrative setups of combined ventures such as they had there. This was financed by an LEAA grant.

We went to Miami for the Democratic Convention, went through all of the procedures, administrative and operational. We observed their activities, made suggestions, sat in on the conferences relative to action, made suggestions and, thereafter, caused a report to be prepared and which, by the way, has still not been finished—I don't know what is holding it up—regarding recommendations to host cities in the future as to proper preparations for security.

Senator BYRD. Well, is this the—did you have other duties in connection with those conventions?

My question was, would you describe your duties in connection with the conventions?

Mr. KELLEY. Those were the duties—to observe, to recommend, and thereafter, we have been preparing this report.

Senator BYRD. The report is not completed?

Mr. KELLEY. No, sir.

Senator BYRD. When will it be completed?

Mr. KELLEY. I think it is ready for printing now.

Senator BYRD. To whom will it be disseminated?

Mr. KELLEY. It would be given to the LEAA administration to be available to host cities in the future where the conventions will be held.

Senator BYRD. From your experience in preparing for the conventions, how would you estimate the relative usefulness of the intelligence you received from the FBI?

Mr. KELLEY. The intelligence from the FBI—

Senator BYRD. And other agencies?

Mr. KELLEY [continuing]. And other agencies. I think, was very good. We, at first, were of the opinion that there was not proper communication and that was quickly rectified. My observations thereafter indicated that they worked as a team and very well.

Senator BYRD. One witness at the Gray hearings noted that the FBI has a so-called "no contact list" of persons not to be approached by FBI agents. If you are confirmed as Director, will you inquire into this practice?

Mr. KELLEY. I will, sir.

Senator BYRD. And will you continue the use of such a no contact list?

Mr. KELLEY. I don't know what the no contact list is, and why it was established, and what are the criteria. I will look into it.

Senator BYRD. Presumably, these are persons who are not to be approached by FBI agents. Do you foresee any need for continuing such a no contact list?

Mr. KELLEY. I don't know the reason for it as yet. It might well be that there is good reason. But unless there is good reason, I would discontinue it.

Senator BYRD. Do you feel that domestic intelligence requirements could in any circumstances justify breaking the law by FBI agents by unauthorized entry into offices or homes, illegal wiretapping, or similar activities?

Mr. KELLEY. I don't think that illegal activity can be condoned under any circumstances. There are inherent in the wiretap law under title III, of course, some entries that must necessarily be made. Insofar as foreign intelligence, it might well be that the same thing could prevail.

But insofar as illegality of that, I at least thought that this was dispelled through the very fact that it had been authorized.

Senator BYRD. In other words, you are saying, you are giving me a "no" answer to my question. Do you feel that domestic intelligence requirements—I didn't say anything about foreign intelligence—could in any circumstances justify breaking the law by FBI agents by unauthorized entry in offices, homes, illegal wiretapping, or similar activity?

Mr. KELLEY. I didn't mean to indicate that the term "domestic intelligence" was improper, but under the Keith decision, it was my understanding that it had to be, for Presidential approval, foreign intelligence. If you wanted to term some matters other than foreign intelligence as coming within the general category of domestic intelligence, it could conceivably come under title III and they could get authorization thereby.

Senator BYRD. But you are talking about getting authorization. Do you feel that domestic intelligence requirements could, in any circumstance, justify breaking the law by FBI agents by unauthorized entry?

Mr. KELLEY. The answer is no to that, sir.

Senator BYRD. Unauthorized entry, illegal wiretapping?

Mr. KELLEY. That is right. I would not condone illegal wiretapping or unauthorized entry.

Senator BYRD. You will recall, perhaps, reading in the newspapers that certain FBI raw files or information gleaned therefrom—strike that—that certain FBI confidential information was shown to Mr. Segretti. Should such information be given to anyone who has not been authorized by statute to receive it?

Mr. KELLEY. You did not say raw files. Any information within the FBI which is given to unauthorized persons?

Senator BYRD. Yes.

Mr. KELLEY. I could not feel it should be.

Senator BYRD. Any confidential information, FBI information—should there be a statute—

Mr. KELLEY. Should there be a statute?

Senator BYRD. Should there be a statute which would prohibit such? There is no such statute now, I take it.

Mr. KELLEY. I don't know. I thought there was.

Senator BYRD. Is there a statute at the present time that would have prohibited the revelation of FBI confidential information to Mr. Segretti?

Mr. KELLEY. I don't know.

Senator BYRD. I am reminded that Mr. Gray indicated that there was no statute, but that, of course, it was against policy. What is your feeling in this regard?

Mr. KELLEY. I do not think it should be revealed.

Senator BYRD. Do you feel that there ought to be a statutory prohibition of it?

Mr. KELLEY. Yes.

Senator BYRD. Should arrest records only, without information about the disposition of the case, ever be disseminated by the FBI?

Mr. KELLEY. They have been, and for many years, disseminated to law enforcement agencies through the criminal records and it is extremely difficult to get dispositions for all arrests. There, as a matter of fact, are some which are shown as arrests on the criminal records which are pending and you could not possibly get any disposition on them.

Senator BYRD. But other than those that are pending and in connection with which the information concerning disposition is available, how do you feel about the dissemination of arrest records without the accompanying information concerning the disposition of the case?

Mr. KELLEY. I would hope that we could continue it, because law enforcement needs it badly.

Senator BYRD. Needs what?

Mr. KELLEY. The information about the criminal record, which includes arrests.

Senator BYRD. What controls does the Bureau have to assure that persons who infiltrate groups do not themselves instigate criminal activities?

Mr. KELLEY. The controls of warning them first about entrapment; the controls of telling them what is procedure and what is not by frequent conferences with them to assure that they do not deviate from this course. There is, should be, a close scrutiny of their activities generally to make sure that they do not do this.

Senator BYRD. What action is taken if they do deviate from the course?

Mr. KELLEY. Well, usually—I don't know of any violations such as this in my experience, but I would think that they would be dismissed immediately. They should be crossed off, no longer use them. You can't trust one that does that.

Senator BYRD. How do you go about ascertaining the veracity and the reliability of informants?

Mr. KELLEY. There are criminal and generally described as security informants. The criminal informants are very seldom people of great veracity and you must take your chances and make sure that you get a modicum, at least, of good information, and on occasions, they will give you bad information. In the field of security, this is not as true, by any means. They usually are more reliable informants.

Of course, insofar as establishing reliability, the proof is in their production and if you have an informant who gives you accurate information consistently, I think he can be described as reliable.

Senator BYRD. Do you know how many informants are presently employed by the FBI?

Mr. KELLEY. No, sir.

Senator BYRD. How does the Bureau guard against the dangers that informants will fabricate or exaggerate in order to maintain good relations with their special agent contact and thereby assure continuing informant payments?

Mr. KELLEY. The agent in the days when I was in the FBI was charged with the responsibility to make sure that he does not fabricate, embellish, or otherwise develop some figment of his own imagination. And that is his direct responsibility and if an agent fails to give this type of scrutiny, he, too, is criticized as well as the informant, discharged or taken off the informant rolls.

Senator BYRD. What avenue does the Bureau have for allowing constructive criticism by agents within the Bureau?

Mr. KELLEY. I can't tell you, Senator. I would certainly feel that there should be an avenue of channeling constructive criticism through to the administration. I would welcome it.

Senator BYRD. And if it is constructive criticism, you do not think that there should be any acts of reprisal taken against agents who offer such criticism?

Mr. KELLEY. I spoke yesterday, and you were not here, of a participatory management program that we are involved in. I have for a long time felt that we have not tapped a very good course; that is, the officer on the street. I subscribe to this and will welcome the participation by any agent in constructive criticism.

Senator BYRD. Getting back to the area of intelligence gathering, are there any criteria that you could cite that are used to determine what individuals or what organization should be watched?

Mr. KELLEY. Generally, the criterion is does he or the group to which he has attached himself sponsor, join in a conspiracy or make overt acts toward the overthrow of the Government by force or violence? There is also the possibility that it is an organization which is attached to one that has this aim. But over all, the consideration is that very thing: Does his association or does his action point toward the danger to the Nation by this overthrow through force and violence?

Senator BYRD. And who makes this determination? Does the Director or ought the Director to make this final determination as to whether or not the action is considered to be directed to the overthrow of the Nation?

Mr. KELLEY. No. I am sure that this is, on many occasions, determined by a lower echelon and even should go to the agent himself. Generally, there is a prescribed area for development of informants and certain groups which have been so classified and the development of informants within that group is advantageous.

Senator BYRD. In other words, any agent within the organization can make this decision for himself?

Mr. KELLEY. No, he cannot make a decision for himself, necessarily. If he developed an informant in a totally innocuous group, of course, he would be told: cease and desist immediately. Everything which he

had done is supervised carefully. I say that he, however, might start the development of an informant and construe it as a proper course. But he does have checks on him and it might be that even at the field office level, there is an approval and it goes up to the seat of government, the headquarters, and they might say, no, this is not a proper area for development of informants.

Senator BYRD. In other words, each agent would have someone above him checking on his activities?

Mr. KELLEY. Yes, sir.

Senator BYRD. Before he could decide to initiate any intelligence-gathering activities in connection with a particular group, he would sound out the people above him and they, in turn, would pass on his judgment. Would they, then, in turn inquire of someone above them? Is that the way it works?

Mr. KELLEY. I don't know whether it is necessarily inquire, but it would be that the initiation of the development would go through the experience steps. If it is disapproved, of course, the action would be taken immediately to send it back disapproved.

Actually, inquiry, I don't suppose that in many cases, this is true, except where he is in a quandary, and at that point, he might ask somebody.

Senator BYRD. What controls exist within the Bureau, if any, to limit infiltration, surveillance and accumulation of information about groups and individuals where they are not engaged in criminal activity or in activities considered to be subversive of the Government?

Mr. KELLEY. I don't know what controls are present now. I certainly would say that they should be, that you would not be wasting your time on something and you are not possibly violating peoples' rights, that you not invade an organization through this type of penetration, because it is just not proper.

Senator BYRD. But as far as you know, there are no such controls presently existing in the Bureau?

Mr. KELLEY. I think it would be very difficult to set controls. Senator. There is such a wide field that it would have to be almost a generalization and you must depend, to a considerable extent, on the good judgment of the agents, from the agent working on the case on through to all of the supervisors.

Senator BYRD. I think what I am trying to get at here is whether there presently exists or whether there needs to exist in the Bureau someone who carries the final responsibility for making such decisions as to what groups will be infiltrated, what groups are not engaged in criminal activity and ought not to be infiltrated. But as I gather, there is as far as you know, no such centralized decisionmaking authority.

Mr. KELLEY. I would imagine that in the FBI, possibly, this is some sort of a general order, that it could go on through to the Director. And I certainly feel he should reserve the right to make a determination of some questionable development.

Yes, there would be a final central authority, the Director.

Senator BYRD. Is this in every case? Do I understand you to say that in every case that might involve surveillance or infiltration or intelligence-gathering, or is it just in cases where the people at the lower echelons didn't make the decisions themselves and wanted someone else up above to make the decision?

Mr. KELLEY. I am sure that every case is not reviewed by the Director, but I am confident that there must be on questionable developments that it go up to him. But I don't know, actually, what is the procedure at this time.

Senator BYRD. What procedures does the Bureau have for disengaging from the infiltration or surveillance of groups? Just make a decision to stop it?

Mr. KELLEY. Again, I don't know what is their procedure. Insofar as my personal experience in the police work, I say stop it, and that is all there is to it.

Senator BYRD. Is there a requirement that special agents recruit a certain minimum number of informants? Is there any such requirement?

Mr. KELLEY. Not that I know of, sir.

Senator BYRD. I am not sure we fully explored the questions I asked this morning with respect to the storing and the safeguarding of information which results from intelligence-gathering—how it is stored, how is it safeguarded, who has access to it, who does not. Could you be helpful?

Mr. KELLEY. I will try, sir. You want to know what precautions are presently in place and I, of course, cannot answer that. But I know that as an FBI agent, I could not go to the files and say, I want that file in the seat of government. At the field office level, yes, I could get most files. There are some that I would be questioned, and I understand that now, in most offices, there is a file repository in connection with each one of the supervisors—at least in some offices this is true. And you can't just meander in there and get any file. There is a bar to some files. Personnel files, for example, are kept in the agent in charge's office and there just isn't any permission given to go through all of those.

I cannot delineate just what are the very confidential types of files, but I am confident that these—I am positive that they include the personnel files and probably some of the informant files.

Senator BYRD. What is the policy insofar as you know regarding the evaluation of data that comes to the FBI in its intelligence-gathering operations? Who evaluates it? How is it evaluated as to its worth, its validity, and so on?

Mr. KELLEY. I don't know.

Senator BYRD. How much information-swapping is there among various governmental agencies in the Government of intelligence information?

Mr. KELLEY. I can't answer that, Senator. I just don't know what is the scope of it.

Senator BYRD. You don't know what the scope and the pattern of it is with respect to the FBI and other governmental agencies?

Mr. KELLEY. No, sir.

Senator BYRD. Do you know whether or not the White House receives FBI letterhead memorandums to inform them of the role of extremists and their attempts to influence Government policy?

Mr. KELLEY. No, sir.

Senator BYRD. What would be your attitude toward supplying the White House with letterhead memorandums as has been the case in recent months?

Mr. KELLEY. Letterhead memorandums?

Senator BYRD. Mr. Gray seemed to make quite a distinction between LHM's and raw FBI files. I talked with you this morning or earlier today about releasing confidential FBI information to the White House. You indicated that you would not do this except when explicitly requested by the President himself in writing or orally to you. What about letterhead memorandums, which I take it, as I recall the Gray hearings, really amounted to digests of raw files? Would you make these available to White House aides?

Mr. KELLEY. No, sir.

Senator BYRD. Would these be sent to the White House as a matter of course without being requested?

Mr. KELLEY. Sent to the President, you mean?

Senator BYRD. Sent to the White House.

Mr. KELLEY. No, sir.

Senator BYRD. Suppose an employee of the White House runs afoul of the law. What would be the policy of the FBI under your directorship in connection with supplying the White House with letterhead memorandums concerning the individual?

Mr. KELLEY. It could well be that if we came to that knowledge, we would inform the Attorney General and expect it to go on to the President.

Senator BYRD. You would inform the Attorney General of what?

Mr. KELLEY. The letterhead memorandum, as you described it, would go to him and then to the President.

Senator BYRD. Why would a letterhead memorandum be sent to the President concerning the arrest of a White House aide?

Mr. KELLEY. I don't know what the circumstances——

Senator BYRD. Are you saying it would automatically go to the White House through the Attorney General?

Mr. KELLEY. I would imagine that it would, but I don't know. I know that if one of the officers of our Department is arrested in Kansas City, Kans., across the line, I would want to know about it. And I am sure that the President would want to know about it.

Senator BYRD. Well, other than just informing the White House through the Attorney General that John Doe has been arrested for a violation of the IOC statutes, would you go beyond that as a matter of course?

Mr. KELLEY. Senator, I must ask you, what is the IOC?

Senator BYRD. Intercepted Oral Communications statute.

What I am saying here is, suppose we had a situation in which a Mr. Hunt were to be arrested in connection with breaking and entering at the Watergate. Would you consider it the responsibility of the Director automatically to inform the White House that Mr. Hunt, who is supposed to be employed there, has been arrested for violation of this Federal statute?

Mr. KELLEY. And Mr. Hunt was an——

Senator BYRD. An employee of the White House.

Mr. KELLEY. Yes.

Senator BYRD. Beyond that, would you——

Mr. KELLEY. I would launch an investigation, inasmuch as this IOC statute is a Federal violation.

Senator BYRD. Beyond, however, merely informing the White House of the arrest of one of its employees, would you continue to supply it, as a matter of course, followup memorandums concerning your findings in the matter?

Mr. KELLEY. I would—I don't know what the practices are. I would not, as a matter of course, do so; no.

Senator BYRD. You would not?

Mr. KELLEY. I would see to it that the investigation is conducted.

Senator BYRD. You would not feel, though, that you had a duty to keep the White House informed of your findings in connection with that particular case?

Mr. KELLEY. I don't know, Senator. I would imagine that there might be a request for periodic reports on it. But as a matter of course, in all cases, no, I would not think that would be necessary.

Senator BYRD. But if such a request, in order to be complied with, meant that you had to supply confidential FBI information on that particular individual to the White House, would you comply with such requests as long as they did not come directly from the President in writing or orally to you?

Mr. KELLEY. No, it would have to come from him, Senator.

Senator BYRD. Mr. Kelley, there are certain areas in which you have indicated that you do not have knowledge, and understandably so, in connection with the current policies of the FBI. Would you mind looking at the transcript once you become Director, if you are so confirmed, would you mind taking a look at the hearings and supplying the committee with information in response to these questions?

Mr. KELLEY. I have every intention to review and to be well informed, and I would not be adverse to do so, under proper conditions, where I know what I am talking about.

Senator BYRD. The reason I am asking, I would certainly hope that this committee or a subcommittee thereof would conduct some hearings in some detail, at least, into the role of the FBI, its functions, and policies that are made therein, and whether or not standards and guidelines ought to be enunciated. It would seem to me it would be helpful to the committee prior to such a hearing—if it is the desire of the chairman to permit the committee or a subcommittee to go into such an exercise, it might be helpful prior thereto to have responses that you might care to give to any questions that have already been asked concerning such FBI policies or practices.

Mr. KELLEY. Yes, sir.

Senator BYRD. Mr. Kelley, I thank you for your patience and for your responses to my questions.

I think that the chairman indicated that the next meeting would be 10:30 Monday. But before adjourning the hearing for the day, I would like someone on the staff to contact Senator Mathias and see if he would like to come over and ask some questions yet this afternoon. With your indulgence, Mr. Kelley, we will find that out. Senator Mathias told me just a while ago that he would like to come over, if he could, about 4 o'clock.

Mr. KELLEY. May I make an inquiry about a plane reservation?

Senator BYRD. Certainly.

Mr. Kelley, I am not certain I covered one question that may have been covered already. Mr. Gray's statement to this committee last year

had reference at one point to current policies with regard to the investigation of individuals where there has been no specific violation of Federal law. If you are confirmed as Director, would you inquire into such policies and report your findings to this committee?

Mr. KELLEY. Yes, sir.

Senator BYRD. Do you have any knowledge of such policies at the moment?

Mr. KELLEY. No, sir.

Senator BYRD. Where there has been no specific violation of the Federal law? You don't know what the policies are or whether there are any policies that generally govern the investigations of persons who have not been charged with—

Mr. KELLEY. No, I do not. I don't know what it is with regard to the present policy.

Senator BYRD. While we are awaiting the results of the phone call, Mr. Kelley, what types of information concerning criminal or potential criminal activity should be centralized and made available to all Federal and State investigative agencies and what type should, on the other hand, be kept at the local level to lessen the dangers to individual rights?

Mr. KELLEY. The data processing system which has been developed under the National Crime Information Center, I think, very adequately sets out information that is necessary for police departments to operate and their criminal records, wanted persons, stolen property, stolen automobiles and other information, I would say, should be maintained in the local agency.

Senator BYRD. Off the record.

[Off the record discussion.]

Senator BYRD. I haven't been able to hear anything from Senator Mathias. I think in view of the fact that the chairman is going to resume the hearings on Monday, I do not think we will keep you waiting any longer. So in accordance with the instructions of the chairman, the committee will stand in recess until Monday morning next at 10:30.

Thank you.

[Whereupon, at 3:50 p.m., the committee recessed to reconvene at 10:30 a.m., Monday, June 25, 1973.]

NOMINATION OF CLARENCE M. KELLEY, TO BE DIRECTOR OF THE FEDERAL BUREAU OF INVESTIGATION

MONDAY, JUNE 25, 1973

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Bayh, Hruska, Hart, and Thurmond.

Also present: Peter Stockett, Francis C. Rosenberger, Tom Hart, and Hite McLean, professional staff members.

The CHAIRMAN. The committee will come to order.

Bruce Watkins.

Senator HRUSKA. Mr. Chairman, while the witnesses are getting seated I submit, for inclusion in the record, a letter from the Kansas City Chamber of Commerce and a resolution, and ask that it be incorporated.

The CHAIRMAN. It will be admitted.

[The letter and resolution referred to follows:]

THE CHAMBER OF COMMERCE OF GREATER KANSAS CITY,
Kansas City Mo., June 19, 1973.

Senator ROMAN L. HRUSKA,
Senate Judiciary Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR: The attached resolution is an indication of the deep respect and admiration which Clarence Kelley, Chief of Police of Kansas City, has earned from the community over many years.

Naturally, we are proud that President Nixon has recognized the unique abilities of one of our most distinguished citizens. We look forward to his appointment as Director of the Federal Bureau of Investigation with one and only one reservation—Kansas City will be losing the finest Police Chief in the nation. This is not simply an expression of local enthusiasm, but heartfelt respect and appreciation for the man. Axiomatically, this same respect and appreciation gives birth to our confidence that your Committee's approval of this appointment will be a matter of pride to each member through the months and years ahead.

We recommend Clarence Kelley, without qualification, for this sensitive position at this particularly sensitive time in the history of our nation.

Respectfully,

DUTTON BROOKFIELD.

THE CHAMBER OF COMMERCE OF GREATER KANSAS CITY

A RESOLUTION

Whereas, Chief Clarence Kelley has distinguished himself as one of the most outstanding law enforcement officers in the United States; and

Whereas, Chief Kelley has served the Kansas City, Missouri, community for eleven years with unfaltering dedication and excellence; and

Whereas, Chief Kelley has created a model police force in Kansas City, Missouri, that is respected and emulated worldwide; and

Whereas, President Nixon has recognized the outstanding qualifications and abilities of Chief Kelley and nominated him to fill a position commensurate with those abilities: Now, therefore, be it

Resolved by the Board of Directors of the Chamber of Commerce of Greater Kansas City, That the United States Senate Judiciary Committee confirm the nomination of Chief Clarence Kelley as Director of the Federal Bureau of Investigation; and finally

That this resolution be spread upon the minutes of the meeting of the Chamber Directorate this 18th day of June, 1973, in testimony of this action and that facsimiles hereof be furnished to the Honorable Members of the United States Senate Judiciary Committee, Honorable Chairman James Eastland, and Honorable President Richard M. Nixon.

Authenticated as Adopted this 18th day of June, 1973.

DUTTON BROOKFIELD,
President.

Attest:

RICHARD K. DEGENHARDT,
Executive Vice President.

TESTIMONY OF BRUCE R. WATKINS, CIRCUIT COURT CLERK, JACKSON COUNTY, KANSAS CITY, MO., ACCOMPANIED BY HAROLD L. HOLIDAY

The CHAIRMAN. Please identify yourself for the record.

Mr. WATKINS. Mr. Chairman, I am Bruce R. Watkins of the circuit court of Jackson County, Kansas City, Mo.

The CHAIRMAN. Who is with you?

Mr. WATKINS. With me is State representative, attorney Harold L. Holiday of Kansas City, Mo.

The CHAIRMAN. Is he your attorney?

Mr. WATKINS. Yes; he is.

The CHAIRMAN. That is fine. Do you want to testify about Chief Kelley?

Mr. WATKINS. Yes, sir.

The CHAIRMAN. Proceed.

Mr. WATKINS. Before I do, Mr. Chairman, I would like to pass my statement and my background up.

The CHAIRMAN. Sure.

You may proceed.

Mr. WATKINS. Thank you.

Mr. Chairman and members of the committee, I, like Martin Luther King, have a dream—that of our Nation working together. At this time and place in history it appears to many that we are receding from that goal in foolish haste.

One of our leading psychologists, Benjamin R. Barber, puts our present dilemma in a better perspective than can most of us. Barber judges our vacillation with this view:

With a sharp eye and a disciplined intelligence we can assess the issues of our times. It appears likely that man is not going to make it. He has done too much that is self-destructive and too little to save himself.

Although it is hardly consoling, there will be a certain justice in his extinction if it results from his thoughts and choices. But it would be unpardonable irony if he were to destroy himself not because of what he thought, but because he thought what he thought made no difference.

The CHAIRMAN. Wait a minute, now. I forgot to swear you.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?

Mr. WATKINS. I do.

I would like at this time to read our original statement when we heard about the possibility of Clarence Kelley becoming the Director of the Federal Bureau of Investigation. The statement comes from all 12 of the black elected officials of Kansas City who are members of Freedom, Inc., which is a nonpartisan civil rights organization.

Present Presidential appointments are more often the best indicator of administrative philosophy. Looking at the record of Clarence Kelley, Kansas City police chief, it is easy to see why he would be chosen by this administration which despite Watergate seeks to run its course in the name of law and order.

We are sure these qualifications appeal to this domestic insensitive administration.

Kelley's qualifications, as might appeal to Nixon, read as follows:

(1) As chief of police, his unyielding position on law and order contributed fuel to the fiery 1968 riots instead of quenching them.

(2) The lives of six innocent black men were sacrificed needlessly under his directions of law and order during the riot.

(3) The Kelley administration has perhaps the worst employment and upgrading record, in regards to black personnel, of comparable size cities in America. There has never been a black in a command position.

(4) Kelley, as expert coverup artist, would appeal to the Nixon philosophy and qualify him to head the most powerful law enforcement agency of the Nation. Under attack, he has demonstrated that he can be cold and unresponsive to human suffering if it means lessening of police power.

(5) Despite continuous complaints from citizens charging police brutality, he has managed, with cool aplomb, to keep a tight ship even though sinister in appearance.

These crisis points would recommend a Clarence Kelley rather than condemn him according to the Nixon criterion. His appointment is a blow against justice. Signed, Bruce R. Watkins, president of Freedom, Inc.

I shall continue with my statement.

I am one of a black Kansas City population of 116,000 plus, but if it is your preconceived opinion that I come solely to express the black complaint then your opinion and my reason are at variance.

I am not, and have never been, a member or supporter of any subversive group or organization. I have always advocated working within the system. For countless hours I have counseled with young men and women, pointing the direction of staying within the law and system, despite the system often expressed negative concern.

I detest violence of any kind, but the worst kind of violence is done by those in whom the citizens should have the greatest trust.

Many say it is fruitless to come here, but all my adult life has been a continuous fight for change within the system. Some change has come about—a man can still speak his conscience.

The reason for my willingness to appear before this august body is that to remain silent would be giving tacit support to arrogant

bureaucratic and brutalizing police power, which if allowed to continue would destroy the freedom of all the people.

Of course, I understand what a great distinction and honor it would be to Kansas City and the State of Missouri if its chief of police were appointed to the highest, most respected and most powerful enforcement position in this Nation. I would like to join with our distinguished Senators, Congressmen, elected officials, and distinguished citizens in offering praise and accolades to Clarence Kelley.

But when I consider the tragic involvement of the Federal Bureau of Investigation and the Central Intelligence Agency in perhaps the most massive and sinister attempt yet made to subvert the political process which has been the guarantee of freedom and liberties for our people, I feel compelled to speak and to speak truthfully.

I fear the growing disrespect our citizens are showing for laws of this United States, but I am of the belief that most comes about through insensitive handling of our laws by our law enforcing agencies.

These United States have become armed camps—not so much black against white, as was predicted—but the people against the police. American life has become a game of cops and robbers. Time demands that this lethal game cease, but it will not until law agencies become responsive to social conditions.

Protectors of the rights and liberties of the people as well as apprehenders of those who refuse to obey and live by our laws enacted by our elected representatives.

A democracy justifies its creation on one ultimate fact—the acceptance and practice of the principle of equality of rights, opportunity, and the treatment of the people it governs. America must become what it should have been in the beginning but which it has never been.

We are just awakening to the frightful specter that our Nation was on its way to becoming a police state in fact. Those of us who expressed earlier fears were ignored as prophets of doom.

We cannot afford to turn our backs on this kind of devious activity as all America did when forewarned of Watergate. But, too often we Americans prefer corruption and oppression to equality which might wreck the boat for the established few.

The amount of power vested in the office of the FBI does set trends for the kind of justice and protections the American citizen receives. I honestly believe the balance to be too delicate to be hopeful that a Clarence Kelley will maintain or restore the FBI as guardian of rights and liberties of the people.

Clarence M. Kelley, as a man, probably exemplifies, as much as anyone else, the stolid, amoral conservatism that seems to constitute the ranks of “police” officialdom of this country today. There is no question as to his loyalty, perseverance and faithfulness to those pristine principals that demand this adherence. There does exist numerous questions to his humanity.

What I really mean is Clarence M. Kelley is the perfect “Big Brother” police official and the real tragedy is that he is merely symptomatic of a condition that permeates the whole country; that is, the poor, the black, are universally denied equality before the law.

The Grays and Magruders illustrate in perspective this tendency, where those in power positions use that power against those less for-

fortunate. More, they fail to live up to the very principles that the Constitution provides—equal protection for all. It now seems that those who have been entrusted by the people through our elective process to enforce the law, to protect all from the onslaught of an eroding criminal element have used the cry of “crime in the streets” to suspend the Constitution; to use police state tactics against the downtrodden, poor, and black for their lot is identical.

Yet, most of our citizenry, our “pillars” of stability, sit back and quietly do nothing, for it doesn’t affect them. This is similar to the drug problem of 20 years which formerly belonged to the poor, but now belongs to everybody.

We must realize the problems of the poor and black today will be everybody’s problem tomorrow; if the rules are suspended for the poor and black, then tomorrow they will be suspended for everybody.

I come as a concerned citizen of these United States about our future and the course of our destiny. I come not to attack a man per se; I come to attack the system he has employed. I come not to question the competency of Clarence Kelley in police work—I come to dis-close the system by which Clarence Kelley has carried on police work—its arrogance and failures.

I voice my objection to the confirmation of Clarence Kelley as the Director of the Federal Bureau of Investigation based upon the following premises:

(1) Police are hired by citizens through their governments to perform police work. It has become a bizarre situation in Kansas City where the employer has become a victim of his own employee. Proper checks and balances are missing in every decision crucial to people and police relationships. Kelley finds it hard to adapt himself as a man running a department to serve people as against a department serving its own image. He is a bureaucratic machine insensitive to human compassion.

(2) During the 1968 Kansas City riot, six innocent black men lost their lives needlessly under Clarence Kelley’s direction of “law and order” during its commission. I use the term innocent because none of the six killed were found to be engaged in any unlawful conduct. Kelley’s defense was his officers thought they were snipers. Yet, I would like to inject this, that even though they thought they were snipers, there were no snipers found, no weapons, no spent shells, no footprints, no handprints, no sniper whatsoever. Just another excuse.

The CHAIRMAN. Was that done on Chief Kelley’s orders?

Mr. WATKINS. Pardon me?

The CHAIRMAN. Was that done on Chief Kelley’s orders?

Mr. WATKINS. He was in full charge of the Police Department during that riot, and including the National Guard that was brought in also.

The CHAIRMAN. Well, now, the Governor sent the National Guard in.

Mr. WATKINS. Well, he’s under the control of the Police Department, the National Guard was. Chief Kelley was in complete control of the situation in Kansas City.

The CHAIRMAN. Well, I know. But—

Mr. WATKINS. Had complete command.

The CHAIRMAN. I know, but he couldn’t control every act in the city. During the riots, of course, he was chief of police.

Mr. WATKINS. Well, I will finish my statement, because he has yet to reprimand any of these officers.

The CHAIRMAN. Just answer my question.

Mr. WATKINS. Sir?

The CHAIRMAN. Just answer my question.

Mr. WATKINS. I couldn't hear you.

The CHAIRMAN. Did Chief Kelley—you spoke of the sniper that was shot—did Chief Kelley order him shot?

Mr. WATKINS. To my knowledge, Chief Kelley was in complete control and in command of the Police Department and the National Guard was placed under his control and at his convenience, so I hold him responsible for these deaths.

The CHAIRMAN. You say you hold him responsible, but you do not say that he ordered this done, is that correct?

Mr. WATKINS. I do not say he ordered this done.

The CHAIRMAN. Correct.

Mr. WATKINS. But, he has yet to reprimand these officers for doing it.

The CHAIRMAN. Now, proceed.

Mr. WATKINS. (3). The Mayor's Commission on Civil Disorder, August 1968, states:

The Commission has made contact with members of the families of all those killed (6) and expressed our regrets. These relatives have indicated that they have never been visited by representatives of either the Police Department or of the city government.

I find it hard to understand why a police officer, killed in the line of duty, is buried with much pomp and glory, a condition I agree with, while on the other hand, a citizen killed by police, accidentally or through misjudgment, is not even given the simple courtesies of sympathy by that department.

(4) Our high rate of police murders are never satisfactorily explained. Public request for proper investigation is handled with clever maneuvering that always suggests police justification. Victims, no matter if innocent, are seldom compensated for police mistakes. Needless to say, the greater number of police victims have been the poor and black. This would seem to imply that these are conditions of circumstance where requirements of law do not necessarily apply. What price on human life?

(5) Citizens complaints go unheeded or are turned to police advantage to build up police power. Our police department has become the highest hierarchy; a power unto itself not subject to any law or regulation except its own.

I call to your attention that there have been numerous complaints of police brutality leveled against the Kansas City Police Department. Numerous demands for public hearings have been made, but during the regime of Clarence M. Kelley, only one such hearing has been held, and the evidence made public was so incriminating that the officer was discharged from service.

This occurred in 1966; no public hearings have been held since. Instead, there has been concerted efforts to whitewash and justify the conduct of any police officer involved. In fact, one police officer was cleared by the department only to be indicted, tried, and convicted under the Federal Civil Rights Act in the Federal Court.

In this case, the FBI made the investigation that led to the conviction. With Clarence Kelley as Director of the FBI, where will the victims of police brutality find relief in the future?

Senator BAYH. Could I interrupt, Mr. Chairman, just so the record would be complete here?

The CHAIRMAN. Sure.

Senator BAYH. You say no public hearings have been held since 1966 after referring to one in which the officer had been discharged. Could you please tell us, sir, what is the procedure, what is the legal procedure for holding hearings for abuses by police officers?

Mr. WATKINS. Well, this is left to the discretion of the Board of Police Commissioners, whether or not a public hearing will be held. Today all complaints go to the Office of Civilian Complaints.

The CHAIRMAN. The board of police commissioners, how are they appointed?

Mr. WATKINS. The board of police commissioners are appointed by the Governor. As you know, Kansas City is one of three cities, I understand, in the country, that does not control its own police department. It is controlled in a sense by the Governor of the State of Missouri, who appoints Kansas City and St. Louis police commissioners.

Senator BAYH. You are making some rather serious charges. I have no way to assess them. I listen with great interest. You are an elected official, and I think we all have a responsibility to examine with great care the charges that you make. I think it is important. The reason I asked the question is that if another body outside of the chief's office is the responsible agency for calling these hearings, then how can we attribute the lack of hearings to the chief's insensitivity to the problems of the minority citizens or insensitivity to the charges of police brutality? That is what I am getting at.

Mr. WATKINS. Well, actually the commission acts upon the chief's recommendation. This is the way it has been during my lifetime in Kansas City. So, I know of one hearing which, when I was a member of the city council, the chief did call and one at the municipal courts, and we have not had one since. There were so many irate citizens there complaining about the department that no hearing like this about complaints about the police department has been held since.

Mr. CHAIRMAN. Now, you say one police officer was cleared by the department only to be indicted, and tried and convicted under the Federal Civil Rights Act. Is that the police department that cleared him?

Mr. WATKINS. Yes.

The CHAIRMAN. I thought you said the commission?

Mr. WATKINS. Well, that is the police department. I mean, the chief works for the board of police commissioners, and usually the board of police commissioners—

The CHAIRMAN. Well, now, you want to be fair with the chief, do you not? He was really cleared, this person was cleared by the board of police commissioners, was he not?

Mr. WATKINS. No, I do not think it ever got to the board of police commissioners. It was cleared by the police department; that is, with the approval of the chief of police.

The CHAIRMAN. OK.

Mr. WATKINS. Vigorous objection has come from various segments of the community about a "spy system" employed by the police de-

partment to harass members of organizations whose political ideals differed to those of Kelley and his department.

I herewith read to you excerpts printed in the Kansas City Star, one of the most powerful newspapers in the Midwest. The date is Tuesday, June 19, 1973:

The police department here has been the target of criticism of its surveillance tactics with regard to black militants, peace demonstrators, other liberal-oriented groups and organized crime.

Maier [Manfried Maier, police department attorney], said that police surveillance at such gatherings had been overt * * * Police surveillance has not always been "over." In December 1968 it was reported that members of the police intelligence unit had posed as television newsmen, one with a camera, at a meeting between the director of the State Welfare Department office here and a dissident group of women on welfare * * *

In May 1972 the department acknowledged that 205 persons had special designations on their records in the police computer, identifying them as of interest to the intelligence unit either because they were believed involved in organized crime, or were leftists "militants" or "activists."

Continuing from the same Kansas City Star article:

The Italian-American Unification Council, a relatively new organization that said it represented the interests of Italian-Americans in Kansas City, objected, because Newman [Lt. Col. James Newman, assistant chief of police] had said about 90 percent of those with organized crime designations in the computer were Italian-Americans.

A month and a half later, Chief Kelley announced that the practice would cease * * * Maier [police attorney] commented that the field interview program was dropped "because we were not getting anything out of it."

End of reference to the Star article. The police department under Clarence Kelley—

The CHAIRMAN. Let me ask you right there about the Kansas City Star. Of course it is a great newspaper. Who was the Star supporting to be the Director of the FBI?

Mr. WATKINS. I am sure the Kansas City Star is supporting Chief Kelley.

The CHAIRMAN. They are supporting Chief Kelley?

Mr. WATKINS. I am sure they are, to my knowledge.

The CHAIRMAN. Well, now, do you have a Negro newspaper?

Mr. WATKINS. Yes, we do.

The CHAIRMAN. What is the name of that?

Mr. WATKINS. The Kansas City Call.

The CHAIRMAN. It is owned by Negroes?

Mr. WATKINS. Yes, it is.

The CHAIRMAN. Its employees are colored?

Mr. WATKINS. It is integrated.

The CHAIRMAN. Who does that paper support?

Mr. WATKINS. The Kansas City Call is supporting Kelley for a different reason, because he is in Kansas City. But, they agree with me in what I am saying here with what has happened.

The CHAIRMAN. Except they have written a couple of editorials in favor of him, have they not?

Mr. WATKINS. I know one that they have.

The CHAIRMAN. Go ahead.

Senator BAYH. Excuse me, Mr. Chairman. Did I understand the witness to say that the black newspaper of Kansas City had endorsed Chief Kelley?

Mr. WATKINS. They have an editorial, but I wish that you would read the editorial. I do not think it was a wholehearted endorsement.

Senator BAYH. Well, I have not read it. I will be glad to read it. But, I would think, just as an observation that any black newspaper worth its salt should not and would not endorse a fellow townsman just because he was from Kansas City if they were sensitive to the problems of the minority citizens and the importance of proper police relations with the community, that to endorse someone they would take that into consideration. And I have not read the editorial, but I would think that would be rather irresponsible editorial policy just to say because he is one of ours that we are going to endorse him, and not go beyond that.

Mr. WATKINS. Senator, I would like for you to read that editorial. I think you will find—

The CHAIRMAN. They ran the editorial twice. In fact, they ran it twice, ran the same editorial twice, did they not?

Mr. WATKINS. Not to my knowledge, Senator.

The CHAIRMAN. Well, I think they did run it twice, once on the 8th of June and then around the 15th of June.

Mr. WATKINS. It is a weekly newspaper.

The CHAIRMAN. I know, and that is why I say they ran it the second time the next week.

You may proceed.

Mr. WATKINS. Thank you.

The police department under Clarence Kelley has suffered no timidity about ignoring the law to protect its self-centered concern for reputation, but Clarence Kelley is no administrator or leader of men, and I fear, will not lead FBI agents. They will lead him. And then he will be forced to defend agents who commit unscrupulous acts in order to defend himself. Should his defense fail, Kelley will sacrifice his agents to protect himself.

Kelley, in a meeting with over 300 people, said he supported 101 percent the conduct of an officer, who at the time was engaged in his own campaign of illegally breaking down doors and beating up on occupants found within.

Clarence Kelley did set himself up as the censor of social views and all groups which expressed views contrary to his.

Mr. Chairman and members of this committee, I will state categorically, that there is not now, nor has there ever been any substantial Communist or subversive element in Kansas City. There was never any need for the type of surveillance instituted by Chief Kelley. He and his department later agreed.

Again, an opinion given in the Final Report of the mayor's commission on civil disorder, August 15, 1968: "Communications between the Police Department and Negro leaders, including younger leaders, should be improved so that the Department will be constantly aware of the needs and problems within the Negro community . . ." This advice was not followed by Kelley; nor has any other advice.

The CHAIRMAN. The mayor's commission on civil disorder, that was a commission set up, was it not, to investigate the riots in Kansas City in 1967?

Mr. WATKINS. That is right, sir.

The CHAIRMAN. Is that correct?

Mr. WATKINS. Well, after the riots.

The riots were in 1968, so it was after the riots.

The CHAIRMAN. All right, whenever it was, but the mayor set up a commission to investigate it. Were there any Negroes on that commission?

Mr. WATKINS. There was one.

The CHAIRMAN. One? Now, your population is 18 percent?

Mr. WATKINS. More than 18 percent. I would say, closer to 22 percent.

The CHAIRMAN. There were five members of this commission. Were they good citizens?

Mr. WATKINS. Yes, they were.

The CHAIRMAN. Who was the black man that was on that Commission?

Mr. WATKINS. Dr. Charles Wilkinson.

The CHAIRMAN. Is he a good man?

Mr. WATKINS. Yes, he was. Yes, he is. They are all honorable men and women.

The CHAIRMAN. Would he tell the truth?

Mr. WATKINS. Yes.

The CHAIRMAN. He would tell the truth?

Mr. WATKINS. Yes.

The CHAIRMAN. He investigated this matter, and they unanimously found that Chief Kelley was not guilty of any wrongdoing during the riots, did they not?

Mr. WATKINS. This is what the commission report said. I do not know whether he personally agreed with that or not. I do not know.

The CHAIRMAN. Well, it was a unanimous report.

Mr. WATKINS. I could not tell you, Senator. All I can say is—

The CHAIRMAN. But, you do say that he is an honorable man, and you do say that he is competent?

Mr. WATKINS. Yes.

The CHAIRMAN. And he investigated and had all of the facts at hand, and he found Chief Kelley had done no wrong.

Mr. WATKINS. Of course, I would say this, when the report came out that it was highly critical. I mean, many people were critical of the report because it did not state the facts as they were. And I might say this, Senator, of anyone that would appear here or has appeared here, I was part of the peacekeeping of the riots from the very first tear gas until the end, and I rode every street, with all of the militants and what have you, trying to keep the peace. I was there just about at everything that ever happened during the riots. I was gassed also myself, and I am giving you a firsthand report, sir.

The CHAIRMAN. I know you were, but after all, the man is a black man, a prominent doctor who had all of the facts at his disposal, and he found that Chief Kelley was not guilty of any wrongdoing.

Mr. WATKINS. But I think the report was critical of the Police Department, the way I read it, and to those members of the commission I have talked to and Dr. Wilkinson.

The CHAIRMAN. Just to be completely fair now—

Mr. WATKINS. Yes.

The CHAIRMAN. They pointed out Chief Kelley and congratulated him on the fine work he had done, is that correct?

Mr. WATKINS. I would not say they complimented him on the fine work because they were very critical of the department also, and when you are critical of the department I do not see how you can say he did a good job.

The CHAIRMAN. Yes, but they said it.

You may proceed.

Mr. WATKINS. Thank you.

These acts alone would suggest a mentality that will surely endanger our liberty and freedom if given the power of the office which he seeks. But, sadly, there are other areas just as critical.

(6) As chief of police, Clarence Kelley has made the minimal effort to comply with the laws of this Nation relating to equal and fair employment. I call to your attention that the laws concerning fair employment practices is the equal to any other law and should be enforced as vigorously and obeyed as assiduously as any other law.

Kelley's testimony before you revealed that when he took over the police department there were 40 black officers and that now there are about 100 in the 1,300 person force among which are three black captains and eight black sergeants. The chief conveyed the thought that this was a credible record for his 12-year administration. For him it is.

As chief of police, Clarence Kelley's record will reveal he has spent far more time in his effort to evade the fair employment practices law than he has in attempting to comply. Although blacks constitute approximately 22 percent or more of the population of Kansas City, blacks comprise only about 7 percent of our police force, and the percentage of those above the rank of sergeant is much less, more like a fraction of 1 percent. We have achieved this level of 7 percent only after 12 years of community prodding, demonstrating, and demanding in addition to the use of every means of political action at our command.

I might mention that we have a lot of substantial employers in Kansas City such as TWA, Hallmark, General Motors, Arco, all of which have a better employment record than our police department in Kansas City.

From the 3-year report—human relations task force on civil disorder, October 1971:

Educational opportunities to assist blacks and other minorities in meeting educational requirements for police work are not presently offered by the police department directly or through referral. It should be noted that in 1969 several high school dropouts were recruited by the department into a Community Service Officer Program and given training intended to make it possible for the recruits to receive a G.E.D. certificate. The program was discontinued. It is vitally important that the Police Department continue its present review of recruiting, application and testing procedures to the end that those practices which may now be unnecessarily impeding employment of more minority officers can be eliminated.

Gentlemen, this among many other recommendations made by the human relations task force to the police department, after a 3-year review of community problems, has gone unheeded by Chief Clarence Kelley.

I have appeared before you as a black man, and to a great extent spoken of black problems bred by the black experience. But I want to make it clear, my overriding interest is in the constitutional rights of every citizen.

Dr. Martin Luther King, Jr., has left us with a philosophical gem of wisdom on mutuality: "All life is interrelated. All men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly. I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be. This is the interrelated structure of reality. Injustice anywhere is a threat to justice everywhere. Whatever affects one directly, affects all directly. Never again can we afford to live with the narrow, provincial 'outside agitator' idea. Anyone who lives inside the United States can never be considered an outsider anywhere within its bounds."

Gentlemen, I would say to you that any man who by his past conduct has demonstrated absolutely no concern about safeguarding and protecting the constitutional rights and liberties of its citizens cannot be entrusted with the awesome power which we have bestowed upon the Director of the Federal Bureau of Investigation.

Therefore, please allow this to go on record. I oppose the confirmation of Clarence M. Kelley for the Directorship of the Federal Bureau of Investigation.

Thank you.

The CHAIRMAN. I notice that you have not detailed one single act of anything specific Chief Kelley has done.

Mr. WATKINS. Mr. Chairman, it is very hard for a private citizen to get any information from the police department of Kansas City. As a member of the city council, when I went on in 1963 and started complaining about police brutality, I went to the police department and they let me know in no uncertain terms that I had no right there, that I had no control over this police department, that it is controlled by the State and as an elected member of the city council, that, in other words, for me to get out completely. Now, there have been at least 10 people, to my knowledge, that have been killed in Kansas City by the police department, and I would invite this committee to investigate the nature of these deaths because it is impossible for me as a citizen to get this information.

The CHAIRMAN. Are you going to charge everything up to——

Mr. WATKINS. They were all under his direction, Mr. Chairman. I cannot charge, but he has not reprimanded anyone. He has not disciplined any of these men.

The CHAIRMAN. Birch?

Senator BAYH. Mr. Chairman.

Mr. Watkins, I mentioned a moment ago that I was very concerned about some of the allegations that had been made because I think surely today, if not in the past, we should demand a high degree of sensitivity relative to the rights of all of our citizens and how that relates to their relationship with law enforcement agencies.

I have here a copy of the editorial that was just given to me, as well as two other articles which if you have no objection, I think we should put in the record.

The CHAIRMAN. What is that?

Senator BAYH. Pardon me?

The CHAIRMAN. Is that the Kansas City Call?

Senator BAYH. The Call.

The CHAIRMAN. We can put it in again. It's all right by me.

Senator BAYH. Is it already in?

The CHAIRMAN. That is my impression, but if I am wrong we can put it in.

Senator BAYH. Why don't we do so, so that it will be easy to follow in his testimony.

[The articles referred to follows:]

[Editorial from the Kansas City Call printed in the June 8-14, 1973, issue and reprinted in the issue of June 15-21, 1973]

CHIEF KELLEY MOVES UP

Although the black community has had its problems and its frustrating experiences with Chief Clarence Kelley, we must offer him our congratulations on being selected as the new director of the Federal Bureau of Investigation.

During the 12 years that he has been here, Chief Kelley has gained the reputation of being a good administrator and a capable law enforcement official. Those qualities plus his 20 years' experience in the FBI before becoming chief of police here made him the No. 1 applicant when a permanent successor to the late J. Edgar Hoover was sought.

Black citizens do not feel that Chief Kelley has been as sensitive to the needs and the aspirations of minority groups as he should have been and when charges of unfairness and brutality have been made, it appeared that he took the side of the police officer "right or wrong." The scarcity of black faces in the top echelon of the Police department also is an irritant in the black community. Chief Kelley and the Board of Police Commissioners have tried to encourage more black youths to join the force by conducting an intensive recruitment campaign among blacks but it has not been too successful—perhaps because of a feeling that the Police department is not really fair and won't give the black man a square shake.

Nevertheless, we wish Chief Kelley well as he moves on to a top national position of grave responsibility. We hope that the encounters he has had with the black citizenry of Kansas City have made him aware of the fact that as FBI chief, he is representing and serving all the people of the nation. We feel that he has learned some lessons here in dealing with minority groups which should help him become an FBI director of whom we all can be proud.

Regardless of the black citizens' feelings toward Chief Kelley, it is a boost to Kansas City to have its chief of police chosen for so high a position. It is good to have the federal government reach out into the Mid-lands, for a change, to secure a man to fill a top national post.

CHIEF KELLEY TO DIRECT FBI

(By James S. Tinney)

News that Police Chief Clarence M. Kelley had been chosen by President Nixon to become the new director of the Federal Bureau of Investigation was met here with fairly uniform response. Local public reactions were somewhat united in the expression that Kelley is just the type of man Nixon and others on Capitol Hill have been looking for.

This means specifically that Kelley fits in with the image the present administration projects. He is a law-and-order man whose politics have been described as "right of center." He is an autocrat who rules with a tight hand the police network under him. And he has always chosen to associate with white vested interests.

His background prepared him, some would say, for this role. Kelley grew up on Kansas City's old Northeast side and attended school there—still an all white area which traditionally has opposed every black political organization in this city. He was at one time a Sunday school teacher in the Christian church (Disciples of Christ), which originated out of religious revival in Kentucky years ago.

City university law school, located in the silk-stocking area of the city and reflective of that area's prejudices until it was merged into the University of Missouri system. He served with the FBI for 21 years, and greatly admired J. Edgar Hoover, whose master-plots against civil libertarians and human rights workers such as Martin Luther King, Jr. are only now coming to light.

When the Republican and Democratic conventions wanted somebody who could draw up a tight security plan for political gatherings, they chose Kelley. When the FBI wanted somebody to teach use of machine guns and other firearms, they too chose Kelley. He was also chosen in 1961 to head up this city police department when it needed someone to institute tight controls and firm discipline within the department.

Now he has been chosen to head the F.B.I.

Thus when white people say Kelley is "the man for the job", they intend for that statement to be taken in a congratulatory way. But when black citizens say that he "fills the bill", the statement is offered in a less-than-enthusiastic manner.

For the type of man Nixon and Agnew want, is not the kind of man the black community needs, some explain.

Throughout Kelley's police career here he has come under constant attack by black citizens. Although the police have never been very popular in the inner-city where they seek to keep black people confined and under control, Kelley has been even less popular.

Store-front police centers in the community, an office for citizen complaints, and an effort to hire more black officers, have all come about under Kelley's regime here. But though some would label these as praiseworthy, it must be recalled that under Kelley, the store-front centers have been closed (he complained that they were being used as "babysitting centers"), the attempts at significantly raising the number of black policemen—have been unsuccessful, and the Office of Citizen Complaints has come under constant attack for being controlled by Kelley and unresponsive to many complaints. The city's commission on human relations even conducted a series of open hearings on the role and image of the O.C.C., and the testimonies heard from blacks at those hearings were by and large extremely opposed to the O.C.C.'s effectiveness.

When this city experienced the commonly called "riots," in 1968, it was under Kelley's administration that six blacks were killed. Afterwards, Kelley spoke of the force used by his team as "regrettable" but "necessary."

A special Mayor's Commission on Civil Disorder found that "the riots were almost immediately followed by criticism of the police generally, and by demands of various Negro groups for the resignation of Chief C. M. Kelley."

It is also recalled that this city, not unlike others, has had a rash of allegations of police brutality. This has been an almost constant state of events even since the days of 1968, and cases are even now pending within this city which charge the police here with brutality.

Unfortunately, Kelley has always sided in with "his men." Even when full evidence was later found that brutal force was indeed used, Kelley always tended to support the police officers involved.

The police under Kelley were never content either until the Black Panthers as an above-ground organization were finally disbanded here.

Curiously, it was Kelley who was charged with releasing more than a hundred confiscated guns to an acquaintance Major General Carl Turner for his personal use. The chief always contended that he thought they were "for a museum", but the Panthers, in addition, claimed evidence that Kelley had also distributed weapons to the far-right white Minutemen here. The issue was eventually dropped, much to Kelley's relief, one supposes.

Not just the Panthers, but the wider black community has often called for Kelley's resignation. The reasons are not hard to find. They are the same reason that the white community as a whole finds in supporting the chief. Evidently they served as reason enough for Nixon to put his approval on the man too.

[From the June 15-21, 1973, issue of the Kansas City Call]

TINNEY ARTICLE ON KELLEY WAS PERSONAL VIEW

The signed article appearing in The Call last week, under the by-line of James S. Tinney, expressed the personal views of Mr. Tinney on the appointment of Chief Clarence Kelley to be the new head of the FBI. It was not the official view of this newspaper.

The official opinion of The Call appeared on the editorial page of the June 8 issue. Because of the controversy over the Kelley nomination, the editorial from last week is being reprinted this week on the editorial page for the convenience of readers who may have missed it.

Senator BAYH. There are more black police officers now than was the case before. That is accurate, is it not?

Mr. WATKINS. Well, there are about 99 to 100 police officers today, and there were about 40, I would say, when I was a member of the city council. There were 55, and that was prior to the riots of 1968.

So, we had an election where we were able to put on 300 more policemen, and I would say approximately 40 black officers have been put on since that time.

Senator BAYH. Now, from reading the press reports, as well as this editorial that talks about Chief Kelley, the board of police commissioners have tried to encourage more black youths to join the force while conducting an intensive recruitment campaign among the blacks. It says that it has not been successful as the Call feels, or you feel, or I feel you would like to see, but you feel this has been a good faith effort?

Mr. WATKINS. No, it has not.

Senator BAYH. You disagree with the Call on that, then?

Mr. WATKINS. Of the 40 blacks that are on the department now, I would say at least five times that many have applied and for some reason or another, some little trivial reason, they have not been accepted by the police department. And I would say that it is very hard for a black man who is really sincere about getting on the department, they find every little reason in the world to keep him off. And I would say this, too: In the recruitment it is hard for anyone to want to get on a department wherein he sees there is no upgrading opportunities. In this history of Kansas City, we have never had a black in command. We have had some who have been acting, or acting as night chief or acting captain, or acting, and I mean, I am talking about the precinct stations, and what have you, and I think there are five or six in Kansas City, but it would seem to me with a population of minority people as you have now that there would be an interest of the department to show that justice is not blind by having a black man highly qualified, and we have many on the department who have college degrees, and who have been commended for their police work. But, still we have never had a black in a command position. This is one of the reasons why many blacks see no future is being policemen and being patrolmen all of their lives.

Senator BAYH. I have no further questions.

I do have a list of questions that I would like to submit for the record and ask the chief to respond to them when it is possible for him to get the information relative to certain allegations involving a man by the name of Terrence Norman, before, after, and during the Kansas City riots. If there are no objections I would like to put this list of questions in the record now.

[The questions referred to and Mr. Kelley's subsequent response follow:]

1. Has Mr. Terrence (Terry) B. Norman ever been under contract, been employed by, or receive funds from the Federal Bureau of Investigation?

2. During the FBI investigation of Kent State, following the shootings of May 4th, did anyone from the FBI examine Norman's gun to verify the Kent State Police report that it had not been fired?

3. When did the FBI investigation of Kent State actually begin? Under what authority was it acting? To whom did it report its findings?

4. Did the FBI probe into the circumstances by which Norman received an accredited press credential from the press officer of the Ohio National Guard?

5. Did the FBI investigate why Norman, allegedly a regular student, was able on May 5 after the campus had officially been closed to remain on the campus? (This was after press had been excluded from the campus.)

6. Does the FBI have any information as to why Norman was not subpoenaed by the Ohio State Grand Jury?

7. Does the FBI know of the location of Mr. Norman presently?

8. Did the FBI question the Kent State Policeman who confiscated Mr. Norman's gun, Patrolman Harold Rice and Detective Tom Kelley?

9. Did the FBI check on how Mr. Norman received a gun permit?

10. Have there been any subsequent questionings of Mr. Norman since May 4, 1970? If so, please list officers involved, date, place and any other pertinent information.

KILLING OF FOUR STUDENTS, KENT STATE UNIVERSITY, KENT, OHIO;
MAY 4, 1970, CIVIL RIGHTS

1. *Has Mr. Terrence (Terry) B. Norman ever been under contract, been employed by, or received funds from the Federal Bureau of Investigation?*

Answer. Terrence B. Norman has never been under contract or directly employed by the FBI. In April, 1970, he supplied information of value to the FBI regarding National Socialist White People's Party (NSWPP) for which he received a cash payment of \$125.

2. *During the FBI investigation of Kent State, following the shootings of May 4th, did anyone from the FBI examine Norman's gun to verify the Kent State Police report that it had not been fired?*

Answer. Norman's .38 caliber snubnose revolver was surrendered to Patrolman Harold Rice of the Kent State University Police Department (KSUPD) on 5/4/70, who then turned it over to Detective Richard Paul Sevelle of the KSUPD. Sevelle turned the weapon over to Detective Thomas Kelly, KSUPD, who finally turned it over to Detective Robert Winkler, KSUPD, all on 5/4/70. Detective Winkler turned the weapon over to Special Agent David J. Cook of the FBI on 5/5/70. The FBI Laboratory did not examine the gun to determine whether it had been fired since the gun had passed through a number of hands before coming into FBI custody. Such a laboratory examination could only show whether the gun had been fired previously, but not as to whether it had been fired on the specific date in question.

3. *When did the FBI investigation of Kent State actually begin? Under what authority was it acting? To whom did it report its findings?*

Answer. The FBI initiated investigation of the incident on 5/5/70, at the request of the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice. Results of the investigation were reported to the Department of Justice.

4. *Did the FBI probe into the circumstances by which Norman received an accredited press credential from the press officer of the Ohio National Guard?*

Answer. No.

5. *Did the FBI investigate why Norman, allegedly a regular student, was able on May 5 after the campus had officially been closed to remain on the campus? (This was after press had been excluded from the campus).*

Answer. No.

6. *Does the FBI have any information as to why Norman was not subpoenaed by the Ohio State Grand Jury?*

Answer. No.

7. *Does the FBI know of the location of Mr. Norman presently?*

Answer. No.

8. *Did the FBI question the Kent State Policeman who confiscated Mr. Norman's gun, Patrolman Harold Rice and Detective Tom Kelley?*

Answer. Patrolman Harold E. Rice, KSUPD, was interviewed by the FBI on 5/8/70, and Thomas Kelly, Chief of the Investigative Division, KSUPD, was interviewed by the FBI on 5/6/70.

9. *Did the FBI check on how Mr. Norman received a gun permit?*

Answer. No. There is no Ohio State Law requiring a permit to own a handgun.

10. *Have there been any subsequent questionings of Mr. Norman since May 4, 1970? If so, please list officers involved, date, place and any other pertinent information.*

Answer. No. He was recontacted on May 15, 1970, to clarify some statements he had made during the interview on May 4, 1970.

Senator HRUSKA. Strom, have you any questions?

Senator THURMOND. Thank you, I have no questions.

Senator HRUSKA. Mr. Witness, in regard to that editorial of the Kansas City Call, it endorses Mr. Kelley, and what is your comment in that regard?

Mr. WATKINS. Well, I think they too have been quite critical of him. I have an editorial by the Kansas City Call that was critical of him during the riots.

Senator HRUSKA. I know, but that has nothing to do with his nomination for FBI Director, does it?

Mr. WATKINS. The Kansas City Call is a very honorable paper, and I have no comment about what their editorial policy is. All I can say is that every black elected official in Kansas City, elected by the people in our community, is overwhelmingly against the appointment of Clarence Kelley, with the exception of one who is running for Mayor, and I guess is—

Senator HRUSKA. Well, there must be at least one that is an exception to that, beyond that, and that is the editorial writer, is it not?

Mr. WATKINS. Well, all 12, and I might name the members of our group, which are the 2 city councilmen, 3 county legislators—well, maybe 1 city councilman, 3 county legislators, 4 State legislators, and 3 county elected officials in Jackson County, we are all opposing the appointment of Chief Kelley.

Senator HRUSKA. That is a little bit afiel. My question was your comment on the editorial. I thought you had said earlier that it was not a wholehearted or a strong endorsement?

Mr. WATKINS. I do not think so, because they were critical of him also, even though they endorsed him.

Senator HRUSKA. Well, to the extent that it was not strong, and your suggestion that it was not a very strong and wholehearted endorsement, would you want to be suggesting that the editor was a little bit two-faced, and that he said one thing in the editorial column and that he had a different idea about Mr. Kelley himself?

Mr. WATKINS. The editor of the Kansas City Call is a very responsible person. Each one of us had our own conscience.

Senator HRUSKA. What are your qualifications for an FBI Director? After all, we have to have somebody there. The law says that we have to have somebody there. What kind of a man would you like to see head that FBI?

Mr. WATKINS. Well, No. 1, I would like to see a man who is strictly behind, who strictly stands behind the Constitution of the United States and enforces the law equally. And I think during this period of our history it is going to be very hard to get a man of that caliber, because to endorse the Constitution and to treat every American equal is un-American.

Senator HRUSKA. But, you see, that does not help us very much.

Mr. WATKINS. No, it does not, Senator.

Senator HRUSKA. You say it is hard to get somebody like that. Where would you like to have us look at what type of man would it be?

Mr. WATKINS. I honestly think we should go somewhere else outside of a police chief.

Senator HRUSKA. Outside of Kansas City?

Mr. WATKINS. Outside of a police chief who has a large black population, because I am sure that I do not condemn, but I think that all police chiefs are going to have the same complaint because of the large black populations in many of our American cities and you are going to have the same complaint because of the way these people are treated. And you are going to have a complaint from each city from the blacks and from the poor because these are the people that feel oppressed and they have been for years. So, I would say that perhaps you are going to get a good policeman from the cities, but you are not going to get a good Director of the FBI which is very sensitive to all of the people of this country.

Senator HRUSKA. Now, if a man were named from a city that had no black people in it, do you have an idea that the criticism might be leveled against him because he knows nothing about black problems, that he is not competent to deal with them because he is not experienced? Do you think such a criticism might be made if you were naming a nominee, and you named such a person?

Mr. WATKINS. I am sure that if I were to name a person that that person would be criticized because it would be a person that was too liberal to be the head of the FBI.

Senator HRUSKA. Too what?

Mr. WATKINS. Too liberal, certainly I would want a man who is more liberal than Chief Kelley, or even more liberal than the former director, J. Edgar Hoover.

Senator HRUSKA. Whether he was liberal or conservative or moderate, you would want him to be fair and equal?

Mr. WATKINS. Fair, yes, sir. Yes, sir.

My criticism of Chief Kelley is that he has not been fair with all of the people.

Senator HRUSKA. I see.

Nationally we have had a reduction in crime in 1972, from 4 or 5 years ago where there had been a 16-percent increase, an average in 5 years preceding 1972, of about 11 percent each year. Last year it went down 3 percent. What was the experience in Kansas City on the rate of crime?

Mr. WATKINS. There has been a slight reduction. But, Senator, I look at this and I think there are a number of reasons why. No. 1. There has been more money spent in law enforcement, more officers have been hired, more sophisticated means have been adapted in order to catch the criminal. And on the other hand, there have been more programs that will help people in the urban areas toward education, receiving employment, and helping them to help themselves.

I think this is one of the reasons why we had the reduction that we have today in crime, and I think with more money being spent in urban areas on domestic problems we will further reduce crime.

Senator HRUSKA. As a matter of fact, the statistics that have been compiled in the Department of Justice under the FBI show that in 1972, there was 13.2 percent fewer crimes in Kansas City than in 1971. That is pretty good. You are in favor of that, are you not?

Mr. WATKINS. Yes, I am. I am in favor of law enforcement.

Senator HRUSKA. And who was chief of police in 1972, in Kansas City, Mo.?

Mr. WATKINS. Chief Clarence Kelley was.

Senator HRUSKA. Do you suppose that he had a little bit to do with it?

Mr. WATKINS. I am sure that he did, Senator. But I am sure that the other Federal programs and Federal moneys did quite a bit also.

Senator HRUSKA. Without that 13 percent increase, would you have called attention to this?

Mr. WATKINS. Yes; I am a strong advocate of the law.

Senator HRUSKA. Thank you very much.

Mr. WATKINS. May I add one thing, that our brutality complaints have not decreased.

Senator HRUSKA. That what?

Mr. WATKINS. Our brutality complaints in Kansas City have not decreased. There are about 60 a year of those people who complain, and there are many others who do not take the time because they feel that it will do no good.

Senator HRUSKA. The making of a complaint does not mean guilt, does it?

Mr. WATKINS. No; it does not. All we want is a hearing on these complaints so we can find out whether the officer is wrong or the person making the complaint is wrong. I think it is important to the community that they know that if a person is wrong, and the policeman is right, that we stand behind that policeman. But, if that policeman is wrong, that he is reprimanded by the police department. This is important. No community, no police department, can properly operate without community support.

Senator HRUSKA. And you think there are as many as 60 complaints?

Mr. WATKINS. At least 60 a year on an average. I got this figure from a former police commissioner, Gerard T. Bryant, who also is somewhat critical of, who served for years under Clarence Kelley, and who is somewhat critical of his appointment.

Senator HRUSKA. Do you know how many arrests the Kansas City, Mo., Police Department made in 1972?

Mr. WATKINS. Sir, I am not familiar with the statistics of the department.

Senator HRUSKA. Available figures indicate that there were approximately 132,000 arrests by that department last year. The police department estimates that there were over 1 million contacts by the police, during that year, which did not result in arrest, but from which citizen complaints could conceivably arise. In any event, the arrests indicate a far greater number than complaints as to police brutality. That would be fair, would it not, as a statement?

Mr. WATKINS. Yes.

Senator HRUSKA. Thank you.

Mr. WATKINS. Thank you, sir.

The CHAIRMAN. Strom?

Senator THURMOND. No questions.

The CHAIRMAN. Thank you.

J. Nelson Thompson.

TESTIMONY OF J. NELSON THOMPSON, ATTORNEY AT LAW, KANSAS CITY, MO.

The CHAIRMAN. Have you got copies of your statement?

Mr. THOMPSON. I do not have any copies myself, Senator, but I believe there were some copies that were made since we entered this chamber, these hearings.

The CHAIRMAN. Speak a little louder, please.

Mr. THOMPSON. I do not have any extra copies of this myself. I was unable to secure copies of it. I just did not have the time to get them together. I just barely got this together to be here.

The CHAIRMAN. Stand up, please.

Do you solemnly swear the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

Mr. THOMPSON. I do.

The CHAIRMAN. You may proceed.

Mr. THOMPSON. My name is J. Nelson Thompson and I am a lawyer. My office is located at 3427 Prospect Avenue, Kansas City, Mo.

I am personally acquainted with Clarence M. Kelley, chief of police of Kansas City, and I have known him for several years and I have, upon many occasions, talked with him on many problems concerning poor people and the black community. During the years I have known Mr. Kelley he has seemed to be an intelligent man, but very insensitive to the problems abundant in the inner city. It appeared to me that he did not know how to act or what to say toward a person if they were black.

It definitely made a difference to him if a person were black. It seems as if he could not understand or communicate with them.

It also appeared that if any problems came up concerning blacks or the black community, he would figuratively shrug his shoulders and pass it off as if it were not worth considering. In other words, to borrow a phrase frequently used by our Vice President, he was an expert in benign neglect.

Being a lawyer and having my office located in the heart of the ghetto, I have an excellent opportunity of learning many things firsthand. I get to know the feelings and the mood of the people in the inner city.

I have been able to anticipate many times what course they will take in certain situations. I know them, and they respect me. I have always been fair and honorable with them, and I know that they have faith in me. I know the pulse of the community.

After the elections in 1964 and an understanding of the sensitiveness of the community and its generally confused attitudes toward the police department policy because of poor communications between the police and the inner city residents, I and two other persons decided to organize a group of the inner city people so that better understanding could be had between all peoples of the Greater Kansas City area. This organization was known as the Legion of the Poor, and I became the legal adviser for them. One hour each day was set aside to listen to and to consult with them at the various headquarters of the legion in the inner city. This service was free to all members.

During this period of time the Legion of the Poor had many contacts with the police department and Chief Kelley, and we were often visited

by them. The atmosphere seemed to be getting better, and mutual respect for each group seemed to be growing. I at last thought that the barriers had been broken and that the communications between the police department and the inner city were good. All of the problems that came through the legion concerning the police were straightened out amicably.

However, from my office I still received reports from clients and prospective clients of continued use of excessive force by the police department amounting to police brutality. Even as the relationship between the police and members of the Legion of the Poor was improved greatly, the other reports that came to my office did not show such improvement prior to 1968. Of the hundreds of reports of excessive force or brutality used by the police, less than 1 percent of those were taken to the police department or the bureau of police commissioners. The reasons why these were not taken to the police department was because the black persons involved felt making such a report would not only be useless, but they were afraid of police retaliation through harassment, and so forth. This was borne out by the fact that in not one single case were the police officers censured or reprimanded. The police officers were always right and the black citizen was always wrong.

Martin Luther King, Jr., was assassinated by a white sniper in Memphis, Tenn., on April 4, 1968, and unrest and riots broke out throughout the entire country except in Kansas City. However, tensions there were high, and I personally knew that one wrong move by either side would have been all that was needed to start up riots in Kansas City.

For example, on Sunday, April 7, I saw some adults behaving in a mischievous manner and fearing that that might be enough to start the explosion I called the police to have them stop anything before it happened. I had described these people as being adults around 20 years of age. When the police arrived in the area they stopped a group of young boys 8 to 11 years of age who were dressed in their Sunday finest, either going to or coming from church, and the police started giving them a hard time as if they were dealing with adult criminals or hoodlums. I knew this error on the part of the police could be enough for the explosion to occur. Therefore I hopped into my car and drove into the center of the confusion. I called to the officer who seemed to be in charge and told him that I was the one who called in the complaint and that these kids were not involved in it. It should have been obvious that small children around 9 or 10 years old, dressed in their Sunday clothes, would not be the type of person to be walking in the street on Sunday, drinking beer, and throwing empty beer cans at cars passing by.

Although tension was great in Kansas City because of the assassination of Dr. King, no serious trouble developed until Tuesday, April 9, 1968. The Kansas City School Board announced that all schools would be closed Tuesday, April 9, 1968, as a memorial to the funeral of Martin Luther King, Jr. The vice president of the Kansas City, Mo., School District announced there would be school as usual. I was due in court downtown at the courthouse at 9 o'clock that morning, and I had no idea of anything unusual happening. But, I happened to look out of the window of the seventh floor of the courthouse and I

noticed that machineguns were being mounted on all buildings in the area. So I immediately began to ascertain why.

At that time I could see no visible sense of disturbance, but I did learn that the students of Lincoln High School and other predominantly black high and junior high schools had decided that they should not be forced to go to school on such an important day to them, and that the student bodies joined forces in the inner city and were going to march down to the city hall to have a conference with Mayor Davis and Chief of Police Clarence M. Kelley.

When I learned of this, combined with machineguns that had been set up on all of the buildings surrounding city hall and the police station, I decided the best thing to do was to try to warn the children not to go into the downtown section. I immediately started driving to where I thought the children were congregating. I intercepted them at approximately 15th and Pasale.

The police were out in force with helicopters overhead, and the mayor tried to talk to them at this corner. They told the mayor that they wanted to see him and the chief downtown at the city hall where he had his office, and the march continued in a fairly orderly manner down to city hall.

The children were still unaware that the machineguns were trained on them.

According to police reports, according to newspaper reports, tension was running high, but everything was under control. The mayor came out of the city hall and talked to the crowd, but Mr. Kelley refused to come out.

Included in the crowd were a number of adults including two Catholic priests, the president of the NAACP and popular disc jockeys from the black-oriented radio station, KPRS. The entire area was surrounded by police with guns.

I must emphasize at this point that the tension was high, but everybody was under control. Arrangements had been hastily made by the KPRS disc jockey and Father Gibbons of the Holy Name Catholic Church to disperse the crowd by obtaining buses to carry them away from downtown to Holy Name Church for a dancing party which was arranged to cool off the tensions that were very evident. Everybody in the crowd agreed that it was a good idea, and buses were brought up, and they started moving away to board the buses.

At that time, the police charged into the crowd, firing tear gas bombs and knocking everybody down who was in the way, including the two priests who were guiding the children to the buses. That is one of the many mistakes made by the police department under the control of the chief, Clarence M. Kelley.

Everybody scattered and the teenagers went to Holy Name in the buses under the direction and guidance of the church, and under the direction and guidance of the church they had a teenage dance inside. In spite of the poor judgment of the police department, of the hasty and unwarranted tear gassing downtown, it is my belief that the real riots could have been averted.

However, apparently the police department, under the direction of Chief Kelley, must not have been satisfied. After the dancing had been underway for at least 45 minutes, with no disorders, and the kids apparently having a good time inside of the church, disturbing nobody,

the police swooped down upon the church and began throwing tear gas around the outside of the church. Then they broke out the windows of the church and two policemen threw tear gas bombs inside the church where the kids were dancing.

With no intent of causing any disturbance, the officials of the church, together with the disc jockeys led all of the children out of the church through many of the exits. The die had been cast by the police under Kelley. The kids were afraid and angry.

That was the beginning of the 1968 riots in Kansas City, precipitated and caused by the police. The rest is history.

All hell broke loose that night with fires, tear gas and shots all over the inner city. The mayor declared a curfew and bus service was halted. Things quieted down about midnight. It seemed as if maybe that was all of the disorders.

This was not to be the case, because at 8 a.m. the next morning at Lincoln School, as the students were lined up to go into school, the police again made a fatal mistake. They ordered the children inside, but the doors were locked and they could not get inside, so once again the police rushed the kids and started throwing tear gas down into their midst. The doors were then opened and the kids ran inside. The police followed them inside, throwing tear gas bombs inside, including the girls' restroom, forcing all the students to come out again and compelling them to get into a huge group on the football field, which was then encircled by police and National Guardsmen.

Several of the community leaders, including myself, hearing about the trouble at Lincoln High School, rushed over there to do whatever we could do to quell the situation. Arrangements were made finally that the kids could hold a mass meeting in Municipal Stadium, a few blocks away, and the police promised not to interfere if we succeeded in keeping the kids from marching downtown again. But, there were quite a few minor disturbances throughout the inner city.

By 6 o'clock in the evening there were approximately 5,000 policemen, guardsmen, and State patrolmen on duty, complete with tanks and armored carriers. The control of all of these policemen, guardsmen and State patrolmen was given over to Chief Clarence M. Kelley.

After 6 o'clock that evening, Prospect was a battleground with highly sophisticated police armaments using tanks and armored carriers to advance on hundreds of black people armed with sticks and bottles. The police claimed that they were being shot at by snipers.

After it was all over they could not find one black sniper, but they did find three white snipers. In the battle around 31st and Prospect and Linwood and Prospect six innocent black people were killed by the police. The Byron Hotel on Prospect was riddled with police gunfire. Almost every window was broken, and 33 doors inside were smashed.

The guests in the hotel were forced out and made to lie down in the dirt in the back of the hotel. Evidence later showed that there was no sniper fire from the Byron Hotel or its roof.

One man named Julius Hamilton was in an apartment on Linwood near Prospect, and hearing all of the noise he peeped out from an upstairs window to see what was going on. The police immediately started shooting at the window, and Mr. Hamilton came downstairs and stood on the inside of the apartment building.

A policeman hollered: "Come on out," and Mr. Hamilton opened the door and stepped out and was immediately shot to death by the policemen. He was unarmed and the father of 10 children, and was also survived by his wife of 24 years.

This brings to mind another incident that occurred approximately 6 months later, where Mr. Hamilton's brother was brutally attacked by many policemen in his home at 2601 Flora without any possible cause or provocation on his part. It just happened that a neighbor on Flora saw everything that happened and called me by telephone and told me step by step as the thing happened. This man was seriously injured by the police, and as far as I know the police were not reprimanded or anything by Chief Kelley.

On the morning of April the 11th I was in my office at 3427 Prospect at about 11:05 a.m. talking on the telephone to a businessman in Mission, Kans., and looking out of my front door. I noticed that a lady, who I later found out was Mrs. Elaine Robinson, was standing in my driveway on the sidewalk talking to a policeman and a National Guardsman. There seemed to be nothing wrong at the time.

A few moments later, after she apparently had been released from her conversation, she started walking north on the sidewalk, minding her own business and saying nothing to anyone. All of a sudden two policemen and three National Guardsmen surrounded her with drawn guns, and the smaller of the police officers, whose name I have not yet been told by the Police Department, began grabbing, pulling and dragging at Mrs. Robinson in a very rough and violent manner. She told them to "take your hands off me, let me go." She repeated these phrases a number of times and she did not use any profanity at any time. The police officers finally dragged her across the street, kicking her as they did so, and threw her into the back seat of the regular police car.

After they threw her into the police car, the smaller officer, who seemed almost crazy with hate, began kicking her several times. At the time I rushed out of my office past the three guardsmen hollering, hollering at the policemen that they were going too far, and they had no right to be beating and kicking a pregnant woman. Mrs. Robinson was obviously pregnant.

Before I could reach the regular police car driven by the bigger officer, the car sped off to the south with Mrs. Robinson in the back seat. The smaller and younger officer, who was doing most of the beating and kicking, ran to his unmarked police car, and his license number was PAO-137, and made a U-turn in Prospect and headed south. That was when I got the license number.

Others who witnessed this brutality by the police were Mrs. Virginia Walker, 3325 Cleveland, Mrs. Nellie Shields, 4426 Bell Fountain; Mrs. Walker, 3425 Prospect and others at that location. I had never seen Mrs. Robinson, also known as Elaine Washington, before April 11, 1968, nor have I ever seen her since. I have never met the lady. She is a stranger to me.

I reported this incident to the Internal Affairs Unit of the Kansas City Police Department on April 12, 1968. Nothing was done on this, to my knowledge.

For several months I did not hear from anybody. Finally I contacted Mr. Kelley by telephone and asked him why I had not heard from him or somebody concerning the incident.

On July 3d, 1968, I received this letter from Mr. Kelley:

POLICE DEPARTMENT,
Kansas City, Mo., July 3, 1968.

J. NELSON THOMPSON,
Kansas City, Mo.

DEAR MR. THOMPSON: I have reviewed the investigation of the complaint you brought to our attention recently involving the conduct of one of our police officers for Mrs. Elaine Robinson. Investigators of our Internal Affairs Unit interviewed Mrs. Robinson and also the officer involved. In her interview Mrs. Robinson made other allegations regarding the conduct of the officer which he completely denied.

On May 21st, 1968, I directed a letter to Mrs. Robinson asking her to take a polygraph examination to substantiate her charges against this officer. Mrs. Robinson has failed to contact this department regarding her decision. I feel she has had ample time to reply to our request. Having failed to hear from her, the investigation of her complaint has been referred to the Board of Police Commissioners and the Governor's Human Relations Advisory Committee for their review.

I am sincerely grateful that you brought this matter to my attention, and assure you that the complaint has been discussed with the officer involved. I regret that any incident should arise in which the propriety of our officers should be questioned. We are continually striving to improve ourselves, specifically in the areas of public and human relations, and many times it is through the cooperation of good citizens such as yourself that we are sometimes made aware of our shortcomings.

Very truly yours,

C. M. KELLEY,
Chief of Police.

I was incensed at the letter and recognized it immediately as being the usual whitewash of police officers where black people are concerned. On July 8, 1968, I mailed the following letter to Chief Kelley:

CLARENCE M. KELLEY,
Chief of Police,
Kansas City, Mo.

DEAR CHIEF KELLEY: I received your letter of July 3rd, 1968, regarding the complaint I made involving the conduct of one of your police officers whose name I have not yet been able to ascertain toward Mrs. Elaine Robinson. It seems to me, Mr. Kelley, that there has been an unwarranted amount of delay on the part of the Police Department in investigating this police brutality. It is now after the 4th of July, and the brutality complained of occurred nearly three months ago, on April the 11th, 1968, at 3427 Prospect, directly in front of my law office. My written complaint, together with the written complaints of at least two other persons, not counting the victim, Mrs. Elaine Robinson, should have been enough for the immediate suspension of the officer involved pending further and more thorough investigation of the situation.

Frankly, I, and the black community, are disappointed in the way in which you are handling the entire situation pertaining to the disorders in Kansas City following the assassination of Dr. Martin Luther King Jr. It appears you have no regard for the sincerity, honesty or dignity of the black citizens and taxpayers of this city, including myself, when you fail to take immediate action against the shortcomings, as you call it—we have other terms for such inhumane action—of your police officers. It appears you are giving your approval to the brutality of the police toward the black citizens of this city by your failure to suspend the accused policeman pending an investigation.

If you would be as prompt and fast in conducting your investigations of police brutality towards the citizens of this city, particularly in the black community, as you are towards having the police fire tear gas bombs into the churches and schools, and against children, without provocation, it would then seem to me that Kansas City might be a better place in which to live.

We, the black people of this community, believe that your vexatious delays in this and other incidents during the disorders in April are uncalled for, shameful and a disgrace of the citizens of this great city, and an insult to our intelligence. Since you have failed to suspend the officer involved in this kicking and

beating of a pregnant woman, it must be construed that you sanction and approve of his action and, therefore, you are equally as guilty as this irresponsible officer.

Since I am one of the persons who made a complaint against the officer, and you are asking for a polygraphic examination to substantiate these charges against the officer, I believe such an examination is unnecessary and that the written statement I have made, together with at least two other witnesses statements and with 10 or 15 other persons actually witnessing, should be sufficient without polygraphic examination. However, I will be happy to come down at your convenience and be given a lie detector test on the statements I have made.

We, the citizens of the inner community of Kansas City, can only believe that your delay and failure to act promptly to investigate the thousands of complaints directed at police toward our citizens is a clear indication of your unwillingness to be concerned about the welfare of the black citizens of this community. And we no longer have faith in the Police Department as long as it is directed by you.

We cannot accept your flimsy excuse in attempting to whitewash the Police Department and this particular officer because Mrs. Robinson has not taken a polygraphic examination. We believe that the evidence against this unnamed police officer overwhelmingly supports an immediate suspension of this officer, with or without a lie detector test of Mrs. Robinson's complaint.

In order to re-establish the lines of communication between the black citizens of this community and the police department, and to restore confidence in our people towards the rest of the community as represented by the police department, we believe that the attitude of the police department, as exemplified by your leadership, must be changed forthwith. Since you have failed to act promptly and fairly in your responsibility to the community, we believe you to be unworthy as the Chief of Police of this great community. Therefore, in the interest of justice, and for the sake of humanity, we demand that both you and the head of the Internal Affairs Unit resign effective immediately.

Very truly yours,

J. NELSON THOMPSON.

Copies were sent to the Board of Police Commissioners, the Governor's Human Relations Advisory Committee, the Mayor's Commission on Civil Disorders, Attorney Harold Holiday, State representative and president of the NAACP, and Representative Richard Bolling, U.S. Congress.

On July 12, 1968, Mr. Kelley responded to my letter as thus:

KANSAS CITY, MO., July 12, 1968.

MR. J. NELSON THOMPSON,
Kansas City, Mo.

DEAR MR. THOMPSON: Your letter of July 8, 1968, sets forth some information which I feel necessitates some clarification. As you know, an investigation of the complaint of Mrs. Robinson was conducted by our Internal Affairs Unit.

In requesting that Mrs. Robinson take a polygraph examination we did not mean to infer, nor do we mean to leave the impression, that the accounts given by you and other witnesses were false. We did have conflicting reports given us, and since each of the witnesses saw this situation from a different point, therefore, they may very possibly have different interpretations as a result of his or her position, and we felt it incumbent upon us to straighten it up by the polygraph examination.

Mrs. Robinson, in her statement, has said she was willing to take a polygraph examination and we, therefore, did not construe the request that she take one as oppressive.

You mentioned that you felt the officer charged with misconduct should have been suspended. Were we to suspend officers prior to investigation and a hearing which might be scheduled thereafter, this could well encompass a period of several days and even weeks. Were he later to be absolved of this, we would have lost his services during the entire period.

In addition, our investigation has been sent to our Board of Police Commissioners and the Governor's Human Relations Advisory Committee, and they have not indicated they felt that my decision was in error. Again, we do not say that

your account or any other is incorrect insofar as those things which you report having seen, but we do feel that on the basis of evidence developed, these activities might well have a different interpretation when considered along with all factors revealed.

CLARENCE M. KELLEY, *Chief of Police*.

The CHAIRMAN. Who was it he referred to?

Mr. THOMPSON. I beg your pardon?

The CHAIRMAN. He made the decision, you say, and then he referred it to who?

Mr. THOMPSON. He says he reported it to the board of police commissioners and human relations advisory committee.

The CHAIRMAN. And they had the power to overrule him?

Mr. THOMPSON. I am not sure of that. I do not know.

The CHAIRMAN. You know they had the power to overrule. They are appointed by the Governor.

Mr. THOMPSON. The indication I had was that they had not done anything on it prior to the time that I—

The CHAIRMAN. The truth about the matter is that they sustained his decision: is that not correct?

Mr. THOMPSON. I did not read that. I did not read that in the letter. The only thing that is stated in this letter was that it had been passed on to them and nothing else has happened since then.

The CHAIRMAN. That means, of course, that they sustained him.

Senator HRUSKA. Mr. Thompson, these instances to which you refer, they occurred in 1968, didn't they?

Mr. THOMPSON. That is correct.

Senator HRUSKA. Were they investigated by the commission that had been appointed to inquire into the riots and the actions of 1968?

Mr. THOMPSON. As to this particular incident, I do not know. I was not contacted by the commission and I was one of the witnesses. I saw it. I was not contacted by the commission.

Senator HRUSKA. The commission did make an inquiry, did it not?

Mr. THOMPSON. Into the riots generally, yes.

Senator HRUSKA. And into the acts of the police during that time. I imagine if the cases are as serious as you have depicted they would very likely reach the attention of that commission, do you not think so?

Mr. THOMPSON. Well, I would think so; and if they investigated, it would appear to me as if they would contact some of the witnesses there. And I think that I was one of the principal witnesses to it.

Senator HRUSKA. Well there were five men. Did you know the five men on that commission?

Mr. THOMPSON. I know Dr. Wilkinson, yes. Who were the other members?

Senator HRUSKA. I do not know. I do not live in Kansas City.

Mr. THOMPSON. None of them contacted me, however.

The CHAIRMAN. What kind of man is Dr. Wilkinson?

Mr. THOMPSON. I beg your pardon?

The CHAIRMAN. What kind of a man is Dr. Wilkinson?

Mr. THOMPSON. He is a very fine man.

The CHAIRMAN. Truthful?

Mr. THOMPSON. He is truthful.

The CHAIRMAN. Honest?

Mr. THOMPSON. As far as I know, he is. I would consider him an outstanding person.

The CHAIRMAN. He is a black man, a black doctor?

Mr. THOMPSON. Right.

The CHAIRMAN. He found that Chief Kelley did nothing wrong, did he not, after an investigation?

Mr. THOMPSON. Well, I am not quite so sure of that, Senator. I never did read the report in its entirety, but I did read—

The CHAIRMAN. If you did not read the report, of course you could not even discuss it.

Mr. THOMPSON. I did read newspaper articles concerning the report and the newspaper articles indicated that the report was very critical. However, I think they supported him generally.

The CHAIRMAN. It could have been critical. What you are trying to do here is, during a riot with all of the police out and the National Guard is out, and what you are trying to do is charge up to Chief Kelley everything that you allege some policeman did, or some national guardsman did.

Mr. THOMPSON. Incidentally, the national guardsmen, as far as I can tell, did not do anything wrong at any time. They were just there.

The CHAIRMAN. They were under Chief Kelley, were they not?

Mr. THOMPSON. They were under Chief Kelley. They were under Chief Kelley's control.

The CHAIRMAN. But the mayor appointed a blue ribbon commission of the leading people in Kansas City and they pointed out that Chief Kelley did a fine job in that riot.

Mr. THOMPSON. Well, I know Chief Kelley personally. He and I get along very nicely together. But we certainly have our differences. I think he is an intelligent person. I think he is a very fine person as far as administration is concerned. But, I do know that he is very insensitive as to our position in the community. I only have a few lines here in Mr. Kelley's letter to finish, and I would like to finish that.

The CHAIRMAN. Proceed.

Mr. THOMPSON. This is Mr. Kelley's reply to my letter of July 8 and this is the concluding paragraph.

"I am sorry you feel—

The CHAIRMAN. Now, wait a minute. Is this a different letter?

Mr. THOMPSON. I beg your pardon?

The CHAIRMAN. Is this a different letter?

Mr. THOMPSON. No; this was the same letter that I was reading.

The CHAIRMAN. Proceed.

Mr. THOMPSON [reading].

I am sorry you feel this matter has not been handled in the approved manner. I do, however, respect your position and in reporting this to you as a public servant who will always feel compelled to answer my complaints, which are voiced, any complaints which are voiced to us, I only wish we could get Mrs. Robinson to assist us in straightening out this matter, and if it is determined she is speaking the entire truth, you are assured the officer will then be given the same test. We do not condone brutality or misconduct, but we also do not convict our men on evidence which is not complete.

Sincerely,

C. M. KELLEY.

Copies went to the Board of Police Commissioners, Governor's Human Relations Advisory Committee, the Mayor's Commission on Civil

Disorders, Representative Harold L. Holiday, Representative Richard Bolling.

Such a letter, in my opinion, is entirely inadequate. I later met with Chief Kelley in his office at his request, and in trying to justify his position and satisfy me he said I was mistaken with what I thought I saw, and that such did not really occur, even though 8 or 10 witnesses witnessed the beating that this pregnant woman received from the police. That is just another tactic that Chief Kelley uses so well in supporting and backing his officers whether they are right or wrong if the other person happens to be a black person.

On Friday, April 12, 1968, at approximately 5:30 p.m., at the corner of Linwood and Prospect, Lester L. Blue drove up on the corner and stopped for the red light in the center lane going west on Linwood. At almost the same time a regular police car, No. 103, drove up and stopped at the same red light in the lane to the right of Mr. Blue. I now quote from Mr. Blue's statement to me:

The officer looked at me and I looked at him. The officer got out of his car and stuck his riot gun through my right window, telling me to get out you black S.B.

Now, these are quotes from Mr. Blue. He refused to use the term. The CHAIRMAN. Hearsay?

Mr. THOMPSON. Right.

The CHAIRMAN. Now, do you think that is fair to Chief Kelley, to try to drag in hearsay of what somebody told you in this hearing.

Mr. THOMPSON. This statement was taken down to the police—to the——

The CHAIRMAN. Do you think that's fair, now? You are a lawyer, you say you are an attorney? Answer my question.

Mr. THOMPSON. Will you repeat that question again?

The CHAIRMAN. You are an attorney; are you not?

Mr. THOMPSON. Yes, sir.

The CHAIRMAN. All right, now, do you think it's fair to drag into this hearing hearsay against Chief Kelley, hearsay of what somebody told you at some time?

Mr. THOMPSON. Well, Senator, this was told to me quite a little while after it occurred. However——

The CHAIRMAN. You say you are a lawyer.

Mr. THOMPSON. Very well, sir.

The CHAIRMAN. Answer my question.

Mr. THOMPSON. I am saying this to you now is hearsay.

The CHAIRMAN. Correct. Now do you think, my question was, do you think it is fair to Chief Kelley to drag hearsay into this hearing?

Mr. THOMPSON. Senator, everything that I have stated here is in——

The CHAIRMAN. Answer my question. Just yes or no.

Mr. THOMPSON. My answer is this, Senator, everything that is stated here is documented in the police department in Kansas City, Mo., and, therefore, this is just a quote made to me. Everything here is at Chief Kelley's disposal. He has it. He knows about it.

The CHAIRMAN. You have not answered my question, and you know you have not answered it.

Mr. THOMPSON. You say, do I think it is right to Chief Kelley for me to bring in hearsay.

The CHAIRMAN. Fair is what I said, yes.

Mr. THOMPSON. I think it is fair, but what I have to say here I think is fair. I think it is fair to Chief Kelley. I think he should know what is being said. He knows what he has done. He knows about this particular case.

Senator HRUSKA. Well, was Chief Kelley there when that policeman pulled that gun out and stuck it through the car window?

Mr. THOMPSON. Chief Kelley was not there at that time, no, sir. But, the officer—

The CHAIRMAN. In fact, you do not know even what happened, do you?

Mr. THOMPSON. Yes, I do.

The CHAIRMAN. No, you know what somebody told you.

Mr. THOMPSON. I have talked to the police department and they have verified this.

The CHAIRMAN. Who?

Mr. THOMPSON. Well—

The CHAIRMAN. Now, understand you are under oath.

Mr. THOMPSON. I understand that.

The CHAIRMAN. Wait a minute, now. You are getting out a newspaper. You said you had talked to the police department and they verified it.

I asked you who in the police department verified it.

Mr. THOMPSON. Well, just a minute.

I have here a statement of Lester Earl Blue taken in the prosecutors office on July 23, 1968, by Jim Shockey, assistant prosecuting attorney in the presence of J. Nelson Thompson, attorney at law. I will be glad to read that to you.

The CHAIRMAN. I do not want you to read it to me. I just asked you the question of who told you. What was—

Mr. THOMPSON. The name of the individual that is prosecuting attorney who took this down is Jim Shockey. He was an assistant. He was an assistant to Teasdale who was the prosecuting attorney. He had talked to—

The CHAIRMAN. He was not in the police department, was he?

Mr. THOMPSON. No, he was not in the police department.

The CHAIRMAN. Well, all right. You said he was, that you had verified it with the police department.

Go ahead and get through with your statement. About how much more of it have you got?

Mr. THOMPSON. About two pages.

The CHAIRMAN. Go ahead.

Mr. THOMPSON. This is a quote from Blue:

The officer looked at me and I looked at him. The officer got out of his car and stuck his riot gun through my right window, telling me to get out, you black S.B. Two National Guardsmen and one policeman were in the car, including the officer. There were no passengers in my car. I was alone. He proceeded to the front on my car with the riot gun still on me. When he got the driver's side he stuck the gun back through the window and repeated what he had said before. And I got out of the car, and he had me to put my hands on the left front fender of my car with the gun still to my cheek. Then he proceeded to hit me with the riot gun.

I asked him, why didn't he arrest me. He told me to shut up, you black S.B., and proceeded to hit me on my right cheek, back, and all the way down to my buttocks. Then I asked him again why did he stop me and he told me to shut up again. Then I turned. I wasn't going to let him hit me any more. He backed up, cocked his riot gun and pulled the trigger. The gun didn't fire. I grabbed the gun. The National Guardsmen cocked their guns on me.

It just happened that an outstanding white lawyer, Sidney L. Willins, was on the same street traveling in the same direction as the police officer and Blue and witnessed the entire incident. Mr. Willins jumped out of the car and ran to the officer and asked him why he was beating this man. Upon seeing Mr. Willins the officer left the scene and drove away without any attempt to arrest or detain Blue after the incident.

There were approximately 50 other witnesses to this. Mr. Blue was hospitalized for 9 days. He had no police record, not even a traffic ticket. He was employed by the Kansas City School District and was on his way to work when this happened. Although the officer did resign from the force, all charges against the policeman were dismissed because they said it would hurt the morale of the police department if charges were filed against him. The police department either failed or refused to bring this case before the prosecutor for action. Blue's medical bills and expenses incurred totaled nearly \$1,000, which he has not been reimbursed, and he was forced to lose his job because of his disability.

On June 25, 1968, Mr. Kelley wrote Mr. Blue an apologetic letter stating that he regretted the incident and informed him 3 months after the incident that the officer had resigned.

Now, that is all of my written statement.

Senator HRUSKA. I have no further questions, Mr. Chairman.

The CHAIRMAN. I have none.

You are excused.

Mr. THOMPSON. Thank you.

The CHAIRMAN. Everett P. O'Neal.

TESTIMONY OF EVERETT P. O'NEAL, KANSAS CITY, MO.

The CHAIRMAN. Do you solemnly swear that the testimony you are about to give us is the truth, the whole truth and nothing but the truth, so help you God?

Mr. O'NEAL. I do, sir.

Shall I begin?

The CHAIRMAN. Identify yourself for the record, please.

Mr. O'NEAL. I am Everett P. O'Neal, president of O'Neal Tire Co., president of the Guard Service Co., and president of O'Neal Investment Corp.

The CHAIRMAN. All right.

Mr. O'NEAL. I might apologize at this particular——

The CHAIRMAN. Would you——

Mr. O'NEAL. Sir?

The CHAIRMAN. Turn his mike on there so we can hear.

Mr. O'NEAL. How's that?

The CHAIRMAN. Now see if it works.

Yes, now proceed.

Mr. O'NEAL. I am Everett P. O'Neal, president of O'Neal Tire Co., the president of the Guard Service Co. and the president of O'Neal Investment Corp.

I might apologize at this particular time for not having a written statement. My bag was lost on the plane yesterday and I was not able even to get it at 10 o'clock this morning, so I am without a written statement.

I have known Chief Kelley ever since he has been the chief of police of Kansas City. I have met with him, with groups and singly, by myself or with one person with me. I have found him to be fair, I have found him to be understanding.

To give you an example of a meeting with a group of business people, we had approximately 10 or 15 suggestions that we felt needed to be made to him. We suggested to him that whenever an officer approached a black person, woman or man, that they need not say "boy" or "girl."

In the next few days I received one of his bulletins stating that all officers were to say "Sir" or "Madam." I do not feel that he was forced to do this. In a number of other incidents this kind of thing was brought before him, and in this particular meeting I think there were only about two particular things that he did not act on.

Now, personally I feel that Chief Kelley has done a very good job in Kansas City in eliminating and in working with the crime situation we have. As you may know, in the urban centers throughout our country we have what is known as a ghetto. Many of those persons I do not feel are responsible for their reaction because it is the environment that has been created through the years whereby they feel that they do not have an opportunity. Therefore, they become very frustrated in their action.

I have worked with a number of those people. I know that other people in my community have worked with them. Fortunately I have been in a position whereby as president of the Chamber of Commerce of Kansas City we set up an employment office whereby we hire three people to operate that office, I as chairman of that particular group.

We went out to industry and found jobs. In that particular area Chief Kelley was one of the advisors and helped us try to find jobs, encourage industry to try to hire the people that we called, a word that I really do not care for, but the unemployable. Some of them had not had training, some had had training, some were underemployed, but we worked on that particular thing.

I have talked with him a number of times about things that I felt should be worthwhile to the entire community, and I have found no hesitancy with him to sit and talk with me about them. I do not always feel that he has agreed with me, but somewhere along the line I have found that he has responded, sometimes not totally, but sometimes with the respect of how it was given to him. I do not think that any individual who is in an administrative situation can know all of the things that his people are doing. I have approximately 300 people who work for me, and I have had reports of various things that have happened, some true, some not true. Those that were true, I worked with the people on both sides of the issue, and sometimes, and just recently, one that I found that the individual who made the accusation was not fair in his statement. It just did not work out that it was in his favor, and I think that you will find that in many, many instances.

I will go to the 1968 riot. In 1968 when the riot occurred in Kansas City I received a call from Andrew Carter, known by most of us as Skip Carter, who is the president of KPRS Radio. He said, Everett, get up there right away, and this was about 8 o'clock in the morning, to Linwood and Indiana at Central High School. I am afraid that things are going to happen.

And I got in my car and went up there. I parked my car in the parking lot of Twin Cities Savings & Loan, which I am one of the directors and the chairman of the board and I went on over to Central High School which is only half a block away. I, Skip Carter, from time to time others. Herman Johnson, Bruce Watkins, a number of us went all the way with these students, and our purpose was to keep these students in line if we possibly could, which I think we did a very good job. There was mace thrown and a lot of confusion, many times by the police who were trying to stop the riot, and at 31st and Trews I got with the sergeant and captain and I said to them, please do not throw mace and these bombs at these kids any more. Let us try to handle them.

Only a block away we were able to sit these boys and girls down and young men and young women down in the Truce Park. We held them there for almost an hour. Then they began to get a little restless, and decided they wanted to go on. We had them to form lines there, which they did, and we went all the way from there, which would be 10. 15 blocks to Truman Road and Purcell.

They began to say that they wanted to see the mayor and the chief of police. By this time Mayor Davis, the mayor at that particular time, was there and he attempted to talk to them.

Now, what had actually happened, in my opinion, and I may be entirely wrong, but I think in my opinion outsiders other than students, and when I say outsiders those who are not the young youths but young dudes who began to create most of the problems, but finally we went on to the city hall and we got them to form on the steps in front of the city hall whereby Mayor Davis spoke to the boys and girls and young men and what have you there. And with that things were settled down to a point. But, down in the street some officers began to throw fire, not fire bombs but mace and so on, and it created another problem. Some of the youths were arrested and put in jail, and I, with Herman Johnson and a few other individuals, went into the city hall and went into the chief of police's office and asked that these youths be released, which they were, and we took them to buses and took them down to the Catholic Church where the Catholic priests had set up a recreation setup for them.

In that particular situation you can see that men or women or whoever it may be become excited and overanxious to quell or tie down a particular situation of this type. They are human and consequently I think they just in some instances overplayed their hand. But I certainly do not, I certainly do not blame Chief Kelley for all of the things that were done in that incident. It has been said that it is his command, but well. I command all of my people but I cannot control all of the incidents that may occur. That is not being realistic.

Then that night, all broke loose. Everything broke loose. I decided that I would sit in my office, in my store, and the width of it going down Prospect is 50 feet with lots of glass, and you may know, my merchandise, and I was sitting there and all at once I heard wow, one of my glasses was knocked out. So, I went to the window and when I got up there, there were two guys inside of the store taking tires out.

I went back and I got my shotgun and I got them stopped. They dropped the tires, but about 3 o'clock in the morning the same thing happened and I had better than \$1,900 worth of glass to be put in there.

Now, I cannot say that Chief Kelley was at fault at this particular time. I think I would be unrealistic if I said that Chief Kelley was that way, was to blame, because you cannot keep up with all of the things that are going on.

Some men, as I said before, become irritated and many of the officers were irritated the same as I was because I did not want my windows broken. I did not want all of this to happen at my place of business because it costs me, and the insurance company, certainly, did not pay for it.

Then it came down to the point where the committee was appointed to investigate the particular things that went on, and Chief Kelley was exonerated as being responsible for it.

I spent, I would say, possibly 2 hours as a witness in this particular committee and I gave the facts as I saw them, and I did not see him being totally responsible for all of the things that went on. After having talked with Chief Kelley or with the commissioners that night I knew that some of the things that were going to happen, they would have no control over, and in making the report some of the people that were there, especially those people who were involved in it and some of them who claimed to have been pushed around by the police department, gave statements that were not statements in my opinion, that would cause a total investigation.

Some were and some were not.

Mr. Holiday, who is my attorney the same as he is Mr. Bruce Watkins' attorney, made a statement that he thought it was a fair investigation himself. That was in the article that was written up in the report by the commission. It is unfortunate to blame an individual for everything that might go on in his, and I will place it as his company. But this particular time it was the chief of police of Kansas City. I think he has done a good job. I think he is sensitive.

Lots of times you must realize that you must go to a person with a certain attitude, in a certain way, a certain fashion, to have him understand the problem you have. You do not go in cursing and raising Cain, and you go in like a man or a woman. Now, some people have indicated that I do not approach the problem as it should be. I have been approaching a number of these problems before many of the people that I know have who are in the civil rights right now. I was many years prior to them coming into the picture. I have been at it a long time in my 62 years. I have been what you may say an old militant. I have fought for what is right, but I had the right approach, and I know that I have the right approach. And we have worked across the table, not up waving a flag or waving a stick at someone. And I think you can get lots more out of sitting across the table and discussing the matter as you see it, and listening to the other individual's side.

The group who investigates these things are the complaint system that we have, and those people thoroughly investigate all of the situations. Now, some of them, you are going to find that they feel are not ones that need to come before the police department or come before the police commissioners. I would have to agree with that. If I see that it really is not worth while coming before them, and we can get it settled before it gets to that point, I see nothing wrong with that. I think that they have been fair.

Mr. Redpath, who was in charge of the office. I have called him a couple of times, and I have asked him about situations, and he has explained to me and said to me, come down and read the report and tell me how you feel about it. On two occasions I felt that he had not gone far enough, but some others I felt that he had.

So, what I am really trying to say in substance is that I think Clarence Kelley has done a very good job for Kansas City. Many call him a technician, and I think he is, but technicalities that he has and has used for the Kansas City Police Department have certainly done a great deal to eliminate the crime which we have in the area where my business is, and we had a number of robberies, and a group of us, about 10 of the people in that area, went down and talked with him stating that we need a 24-hour close surveillance on the businesses in that area. This he did, and right today, right today they still have that surveillance, and that has been 2 years ago. And they are, in my opinion, doing a very good job. There has been no holdups in that vicinity of any consequence in the business area since he put those men on. That is about all I have to say, sir.

The CHAIRMAN. Is he qualified to be Director of the FBI?

Mr. O'NEAL. I do qualify him. I qualify him and I think knowing him as I do that he would make make an excellent man. I do not agree with Mr. Hoover's theories and the way he did a lot of things, but I feel sure that Clarence Kelley will do an excellent job in the FBI as the Chief of the FBI.

The CHAIRMAN. And you recommend him to the committee?

Mr. O'NEAL. I certainly do, sir. I highly recommend him.

Senator HRUSKA. Mr. O'Neal, did you follow the work of the five-man commission that was delegated to inquire into the 1968 riots?

Mr. O'NEAL. Yes, sir.

Senator HRUSKA. Do you think that they tried to do a good job?

Mr. O'NEAL. Oh, they did. There was no whitewashing in my opinion of the job that they did, and I know most of the men and women that were there.

Senator HRUSKA. How was that report received in Kansas City?

Mr. O'NEAL. By and large, and I say by and large, most people agreed. But there were dissenters on it as you would have on most things. You are going to have some dissenters, but most of the people felt that it was a very good report and it was not a whitewash. They spent a great deal of time listening to witnesses as to this particular incident.

Senator HRUSKA. Thank you very much.

The CHAIRMAN. Thank you. You made a fine statement.

We will recess now until 2:30.

[Whereupon, at 12:45 p.m. the hearing was recessed to reconvene at 2:30 p.m. the same day.]

AFTERNOON SESSION

The CHAIRMAN. Senator Hart?

Senator HART. Mr. Chairman and Mr. Kelley, let me go back to the issue I was exploring with you on the very first day of the hearings and that is the so-called domestic intelligence problem and its relationship to the issue of congressional oversight of the Bureau.

Now, later on, you discussed this with both Senator Kennedy and Senator Byrd and perhaps others. And I think from the standpoint of really useful congressional oversight, this is perhaps the most important and difficult area. I am not quite sure where we were when we left off on that.

So, at the risk of being repetitive, let me try to summarize here and review with you where we are on this in terms of your own position and willingness to help this congressional oversight.

The key question is exactly what are we talking about in the area of domestic intelligence? And that is what we have to first nail down. You suggested it was all part of general police intelligence and that, as far as you were concerned, such intelligence always was gathered for eventual use in connection with criminal prosecution and not just for general intelligence purposes.

Now, you used the phrase "in contemplation of prosecution." I am not suggesting that you or the Bureau open files just for the heck of it, or with the thought of using it improperly to intimidate lawful activities. Obviously, you do it in the hope that if someone on whom you have a file does intend to do illegal activities, then your intelligence information would help you at least catch them if not prevent the crime. Is that a fair summary of what you meant in terms of this kind of intelligence files?

Mr. KELLEY. I think so; yes, sir.

Senator HART. Now, I suggest that there is a difference between a specific criminal investigation, started after someone is suspect of committing or planning a crime, and general preventive intelligence files, kept on people because although there is no evidence or suggestion they have, or are planning to commit crimes, somebody thinks they might.

If you are keeping files on militants or activists or other so-called potential troublemakers—and you know we all have our favorite breed for that—because you think they are much more likely to engage in illegal activities than the rest of the population, then I think that is to be avoided. But, in any event, someone has obviously made that judgment about them, either using general criteria or on a case-by-case judgment and have decided that they are so likely to commit a crime, that it is worth keeping files on them, even though you don't keep one on your nice associates or others in the general population who aren't somehow or another pests, troublemakers, boatrockers, or agitators—and I don't mean agitating by violence.

Does that just about describe general police intelligence? Isn't that what it is all about?

Mr. KELLEY. I believe that is the general idea.

Senator HART. Then what I mean by "domestic intelligence" is that kind of filekeeping where the judgment is based on activities and participation in political protest groups, demonstrations, and the like—so I guess now we both do know what we are talking about—that is, opening files and keeping surveillance or infiltrating of groups that are not suspecting of specific criminal activity, but which are deemed potential troublemakers because of their activities in political protests, demonstrations, and criticism of official policy.

Now, it is in this area that I suggested that a free society had to strike a balance between the police goal of the greatest possible pre-

ventative medicine, that is, law enforcement, and the danger of intimidating and inhibiting lawful political protest activities and, indeed, the right and freedom to associate and to petition.

Looking back over the exchange we had in that record, I think I didn't give you a fair opportunity to indicate whether you sensed what I was trying to describe and whether you also feel that there has to be a balancing of these two competitive concerns, that is, preventive intelligence—quite apart from investigating crimes—and uninhibited political protests and other activities and the freedom of association and of speech.

Do you agree that there needs to be a very thoughtful effort to balance these competing interests? Or do you believe that we must simply allow law enforcement officers, Federal and State, to conduct whatever intelligence activity they think some day may be useful, because those being watched might some day become involved in illegal activity? Do you agree with me that we ought not leave that to the judgment unguided of the police authorities?

Mr. KELLEY. There has to be a judgment by someone, Senator, and you have been discussing a matter which is of great concern to law enforcement agencies.

I cannot speak for all intelligence-gathering organizations, but I think that ours is fairly typical in the Kansas City, Mo., police department. In the first place, the intelligence group is separate and apart from the regular criminal investigative group. The fact that they may be interested in a certain person does not mean that that person's name will be included in the permanent files, nor does it mean that the fact that a man or a woman happens to be one in whom they have interest; that that fact is going to be in the indices. They keep, for example, separate indices and many times after an interest has been invoked, it is determined that actually there is no reason to continue that interest. And upon arriving at that point, that interest is dropped and there is no future investigative or intelligence activity regarding him.

I did mention that there have been included in the computer files, some who had been described as militants, and at one time on our computer, this was quite numerous. As I recall, it was something like 150 or so. It is my understanding, it is now around 21. Purging brought it down to that level, and several are people who are wanted by the Federal Government as fugitives from justice.

I would say that the decision as to continuing interest, is based on a judgmental factor and that judgment is exercised to a considerable extent in recognition of the rights of citizens to protest, to dissent, or to otherwise express their constitutional rights. I think that in law enforcement today, more than at any time before, that law enforcement is well aware of the need to not trample on these rights. After all, we have had some bruising experiences and have found that what we do might well retard the progress of the department in other fields.

So, I would say that this is done with a considerable degree of discretion, with great weight given to the rights of the individual. I do not think it has become, in other words, a run-away type of program.

Senator HARR. Then you are saying then that there is need in our kind of society to balance these two concerns, these two interests—there is the bell. Can I continue for awhile?

The CHAIRMAN. You can go on for a few minutes and then recess until the call of the Chair.

Senator HARR. Thank you.

So you do agree there is the necessity of insuring that each of us feel free and under no police surveillance when we engage in and seek to encourage others to engage in citizen activity, and yet there is that other obligation of security and the protection of society. There is this other interest at work: namely, to attempt to prevent crime occurring. You do see the problem of balancing those?

Mr. KELLEY. Yes, sir.

Senator HARR. Now, I can go through a long list of this, but the ultimate question is, is this a decision that the guidelines should be fixed by law enforcement people or lawmakers?

In other words, somehow or another, in Kansas City, somebody decided at this point in history, this particular group was going to be put under surveillance. Now, who should write the rules that establish when in this society of ours that kind of intrusion properly can occur? Should it be the policeman, the police chief, the President, the mayor, or the Congress? You know, who ultimately should provide that criteria for that decision?

Mr. KELLEY. Senator, I know of no group any more steeped in the recognition of the need of respect for human dignity and human rights than the police. And I don't say that by that the record has been perfect, but I do say that it has been much improved and is improving daily.

I would visualize that were there to be a legislative guideline on this, it might be somewhat difficult to interpret and I would also visualize that it would probably be difficult to legislate. And I would choose at this point to say, let the police or the Federal investigative agencies, whichever they might be continue in their learning and discrimination of those which should be dropped and those which should be continued.

I'm much impressed by the progress made in the past few years, Senator, and I know that in my particular subjective knowledge, that I have certainly increased a great deal insofar as my ability to choose in that manner.

Senator HARR. Well, would you agree that, while difficult to spell out, the standard and criteria, which the police develop to determine when intrusion is permissible, in their broad form should be open for public debate and discussion?

Mr. KELLEY. I certainly feel that law enforcement has need to constantly learn of the feelings of the people as to what is a dangerous situation, and wherein do we offend insofar as the observance of rights. I would never object to the public debate incidental to arriving at that conclusion?

Senator HARR. That would mean that the standards would be available, necessarily, if we are going to have a public debate, and that would bring in the Congress—in the case of the Bureau—to let us exchange our opinions and not, so far as I know, as is the case now, have them really not available. Is that really what you are saying?

Mr. KELLEY. What I am saying, in essence, is that I think that public expression always helps us to determine whether or not we are proceeding correctly. I would also, however, point out that I have voiced support to the oversight committee type of review type of operations of the FBI. I think that could well be a forum for discussion of our procedures and were it determined, thereby, that we are out of line, I think that could very plausibly be brought up. I have never been adverse to discussion or a correction where it is felt that we are wrong. I would prefer to have it in the oversight committee in which I would be very much in favor to work closely.

Senator HART. So that you would, as Director of the Bureau, make available, either to the oversight committee or whatever other arrangement was worked out, the criteria for surveillance and infiltration, so that we can see how this balancing effort, this attempt to strike a balance has been made? Is that correct? Is my understanding correct?

Mr. KELLEY. Senator Hart, I am not going to hold back on anything, and there might be some confidential matters which together we might decide would be better not discussed, but insofar as this that you are speaking about, I am very willing to discuss it through the oversight—

Senator HART. Discuss the general criteria?

Mr. KELLEY. Yes, sir.

Senator HART. All right.

I see we are halfway through that rolleall and I will be responsible for Senator Cook missing the vote if we don't recess, so we will recess until the call of the Chair, which will be in a very few minutes.

[Brief recess taken.]

The CHAIRMAN. Mr. Hardy?

Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HARDY. I do.

The CHAIRMAN. Identify yourself for the record, please?

TESTIMONY OF DAVID R. HARDY, PRACTICING ATTORNEY, LAW FIRM OF SHOOK, HARDY & BACON, KANSAS CITY, MO.

Mr. HARDY. May it please the committee, I am David R. Hardy, a practicing attorney in Kansas City, Mo. I have practiced law in Kansas City for nearly 34 years, and am the senior partner in the law firm of Shook, Hardy & Bacon, a firm of some 30 lawyers. Through the years, I have been active in bar association, church, and civic activities, but my primary activity has been my law practice. I served 6 years as one of the lawyer members of the 16th Judicial Commission for the Selection of Trial Judges under the Missouri Nonpartisan Court Plan, being elected to that position by my fellow lawyers. I also served, under Missouri Supreme Court appointment, for approximately 18 years as a member of the bar disciplinary committee. I was chairman of that committee for several years. A brief biographical sketch is attached to this statement.

I have been acquainted with Chief Clarence Kelley since shortly after his appointment as chief of police in Kansas City. Although we do belong to the same church, my acquaintance with him was no more

than a speaking acquaintance until 1968. From April 9 to April 11, 1968, following the assassination of Dr. Martin Luther King, Jr., Kansas City was subjected to civil disorders of substantial proportion. On May 4, 1968, Mayor Ilus W. Davis appointed a commission on civil disorder, requesting that it make a thorough and complete study to determine the facts of the occurrence and recommendations for the prevention of disorders and the establishment of harmonious relations among the people of Kansas City. He appointed me as chairman of that commission. The other members were: Robert P. Ingram, a businessman; Arthur Mag, a senior and respected lawyer; Mrs. Malcolm Smith, a former member of the Human Relations Commission; and Dr. Charles W. Wilkinson, a psychiatrist and much respected leader in the black community. Our executive director was Robert S. Boyd, a younger man, vitally interested in human relations, whose time was donated by his then employer, Midwest Research Institute.

Prior to our appointment, there had been much criticism of the police department and of Chief Kelley, in particular, from some persons in the black community who seemed to blame the entire occurrence on the police department. Since our commission's desire was to learn the true facts and make constructive recommendations for the future of Kansas City, we decided in advance of our investigation that we would avoid personalities and deal in factfinding as to events and recommendations for future action. However, we did agree in advance to make an exception in the case of Chief Kelley. It was our feeling that, because of the vital role of the police department in community relations and services, and because of the focus of criticism by some on Chief Kelley, the entire community was entitled to an objective evaluation from our commission regarding Chief Kelley, including our views as to his ability and capabilities to head our police department.

During the next 3 months we conducted a most intensive and extensive investigation involving interviews of approximately 250 individuals averaging about an hour each. We reviewed television and radio news films and reports, and conducted two surveys in an attempt to determine pertinent attitudes of people in Kansas City.

In addition to the work of staff members, each commissioner devoted perhaps 400 hours of his or her personal time to the work of the commission. On August 15, 1968, the commission unanimously adopted and filed its report consisting of 77 printed pages. This report has been made available to your committee. Our commentary on the police department and Chief Kelley commences on page 45 of that report, which you have.

Since we had interviewed everyone available to us who might have any possible knowledge of the riot, as well as those whose observations concerning community conditions might be of value, there were, of course, differing opinions expressed regarding the police department and Chief Kelley. All of the significant factual evidence, however, as well as the overwhelming weight of the opinion evidence from those in a position best to know and evaluate the facts, established beyond any question that Chief Kelley is a capable and competent chief of police. We reported at page 46:

* * * He is honest and fair, has real integrity, and is highly respected generally by the policemen under his command, including the Negro policemen. He is

well qualified for his job, is a good administrator, and utilized modern and advanced techniques and equipment. Under his leadership the department has steadily improved in quality in most respects. He has the capacity to adapt to changing times and demands, and is now demonstrating this. He is receptive to ideas and suggestions for improvement * * *.

From the time of our commission's report to the present, Chief Kelley has fully measured up to our high estimate of him as a law enforcement officer. It is my sincere belief that he is without a superior in his chosen field. I have never known a law enforcement officer at any level for whom I have greater respect or a higher regard for competence that I have for Chief Kelley. I am sure that if confirmed as Director of the Federal Bureau of Investigation, he will speedily restore the confidence of the public in the Bureau to its former high level. I urge your committee and the Senate to promptly confirm Chief Kelley's appointment.

[The complete statement of Mr. David R. Hardy follows:]

STATEMENT OF DAVID R. HARDY BEFORE THE JUDICIARY COMMITTEE
OF THE U.S. SENATE

I am David R. Hardy, a practicing attorney in Kansas City, Missouri. I have practiced law in Kansas City for nearly thirty-four years and am the senior partner in the law firm of Shook, Hardy & Bacon, a firm of some thirty lawyers. Through the years, I have been active in Bar Association, Church and Civic activities, but my primary activity has been my law practice. I served six years as one of two lawyer members of the Sixteenth Judicial Commission for the Selection of Trial Judges under the Missouri Nonpartisan Court Plan, being elected to that position by my fellow lawyers. I also served, under Missouri Supreme Court appointment, for approximately eighteen years as a member of the Bar Disciplinary Committee. I was chairman of that Committee for several years. A brief biographical sketch is attached to this statement.

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Prior to our appointment, there had been much criticism of the Police Department and of Chief Kelley in particular from some persons in the black community who seemed to blame the entire occurrence on the Police Department. Since our Commission's desire was to learn the true facts and make constructive recommendations for the future of Kansas City, we decided in advance of our investigation that we would avoid personalities and deal in fact finding as to events and recommendations for future action. However, we did agree in advance to make an exception in the case of Chief Kelley. It was our feeling that, because of the vital role of the Police Department in community relations and services, and because of the focus of criticism by some on Chief Kelley, the entire community was entitled to an objective evaluation from our commission regarding Chief Kelley, including our views as to his ability and capabilities to head our Police Department.

During the next three months we conducted a most intensive and extensive investigation involving interviews of approximately two hundred fifty individuals

averaging about an hour each. We reviewed television and radio news films and reports, and conducted two surveys in an attempt to determine pertinent attitudes of people in Kansas City.

In addition to the work of staff members, each Commissioner devoted perhaps four hundred hours of his or her personal time to the work of the Commission. On August 15, 1968, the Commission unanimously adopted and filed its Report consisting of seventy-seven printed pages. This Report has been made available to your Committee. Our Commentary on the Police Department and Chief Kelley commences on Page 45 of that Report, which you have.

Since we had interviewed everyone available to us who might have any possible knowledge of the riot, as well as those whose observations concerning community conditions might be of value, there were, of course, differing opinions expressed regarding the Police Department and Chief Kelley. All of the significant factual evidence, however, as well as the overwhelming weight of the opinion evidence from those in a position best to know and evaluate the facts, established beyond any question that Chief Kelley is a capable and competent Chief of Police. We reported at page 46:

"* * * He is honest and fair, has real integrity, and is highly respected generally by the policemen under his command, including the Negro policemen. He is well qualified for his job, is a good administrator, and utilizes modern and advanced techniques and equipment. Under his leadership the department has steadily improved in quality in most respects. He has the capacity to adapt to changing times and demands, and is now demonstrating this. He is receptive to ideas and suggestions for improvement. * * *"

From the time of our Commission's Report to the present, Chief Kelley has fully measured up to our high estimate of him as a law enforcement officer. It is my sincere belief that he is without a superior in his chosen field. I have never known a law enforcement officer at any level for whom I have greater respect or a higher regard for competence than I have for Chief Kelley. I am sure that if confirmed as Director of the Federal Bureau of Investigation, he will speedily restore the confidence of the public in the Bureau to its former high level. I urge your Committee and the Senate to promptly confirm Chief Kelley's appointment.

BIOGRAPHICAL SKETCH OF DAVID R. HARDY

Date of Birth: August 4, 1917.

Marital Status: Married 33 years to Eleanor Kincaid Hardy—Two children.

Residence: 1246 West 62nd Street, Kansas City, Missouri.

Profession: Lawyer. Senior partner of Shook, Hardy & Bacon, 915 Grand Avenue, Kansas City, Missouri. Associate and partner in same firm since September, 1939.

Education: Westminster College, Fulton, Missouri, 1934-1936. University of Missouri, School of Law, Columbia, Missouri, 1936-1939, J.D. degree 1939.

Member and past president Kansas City Bar Association; Member Lawyers' Association of Kansas City, Missouri Bar and American Bar Association.

Licensed to practice before Supreme Court of Missouri and all Missouri state courts; United States District Court, Western District of Missouri; United States Court of Appeals, 8th Circuit; Supreme Court of the United States and United States Tax Court.

Formerly lawyer member Sixteenth Circuit Judicial Committee for Selection of Judges under Missouri Nonpartisan Court Plan; former chairman and member Sixteenth Judicial Circuit Missouri Bar Disciplinary Committee.

Fellow American College of Trial Lawyers; Member International Society of Barristers, National Association of Railroad Trial Lawyers, International Association of Insurance Counsel, Federation of Insurance Counsel. Past President Kansas City Claims Association; Past President Law School Foundation University of Missouri; Member Kappa Alpha Social Fraternity and Phi Delta Phi Legal Fraternity.

Served to Captain in Corps of Military Police, AUS; Trustee of Country Club Christian Church; Member Board of Elders Country Club Christian Church.

MR. HARDY. Mr. Chairman, I should say to you that on last Friday and Saturday—on Friday and Saturday of last week—I contacted the other living members of our Commission, which included all except Mrs. Smith, who passed away shortly after our report was filed, and all

of the other members assured me that they subscribed to what I told them I was going to tell your committee, as of the present time.

I also would like, if I may, to add two other small items. I have heard the question of sensitivity to minority groups raised. I mentioned earlier that I happen to belong to the same church that the chief does. Last Friday, we received our weekly church paper in which we have the column, "From the Minister's Desk" and if I do say so myself, we have a very devout and outstanding minister who is a leader in race relations. The whole column in the June 20 issue that I saw only Friday was devoted to Chief Kelley and I would like to refer only to the last two paragraphs, and then ask your permission to put the whole article in the record.

These are the two pertinent paragraphs, to your comments about sensitivity:

At the same time it has been my privilege to come to know him as a devout Christian man. His activity in the church is no superficial thing. In the racial disturbances of the late 1960's, I—that being our Minister—organized an interracial event called "Eyeball to Eyeball." This brought together blacks and whites from the churches of Western Missouri. Clarence Kelley spoke to this group. I shall never forget the depth of sincerity as he spoke of his earnest desire that all men of whatever color or creed should know full justice in Kansas City. In private and confidential conversations with him, I have come to know him as a man of profound sensitivity to human beings of all kinds, classes and colors.

My feelings are indeed mixed at this moment. It would seem unthinkable that his nomination would not be confirmed by the Senate, so I must assume that shortly we shall be moving him from our midsts. This leaves me with a great personal sense of loss. At the same time, I can only rejoice that he has been given a job as big as his capacity, and that our nation has been able to find a man upon whom it can place its utter confidence in a perilous hour. May God bless America and may God bless the men such as Clarence Kelley who are called to her service.

It is signed Lawrence W. Bash. I would like to put that in the committee's record.

The CHAIRMAN. It will be admitted in the record.

[Article "From the Minister's Desk . . ." from the June 24 issue of the Country Club Christian follows:]

FROM THE MINISTER'S DESK

We were very high up indeed when we got the news—at about 33,000 feet flying above the Nile River between Asmara, Ethiopia, and Rome. We were higher still when Wayne Carlson passed me the copy of the *London Times*, and we saw a very large picture of Clarence M. Kelley with the announcement that the President had nominated him to head the Federal Bureau of Investigation. I have not yet had time to read the comments on this distinguished nomination, but I have a few reactions of my own which I would like to share with you.

Country Club Christian Church has embraced within its membership some people of great distinction in its 52 years of history. The strength of the church has lain in the quality of its lay leadership. Yet in spite of all the distinctions that have come to our people, it is doubtless true that this is the greatest honor ever to come to a member of our congregation. From the moment the vacancy became known, it has seemed to me almost inevitable that a wise nation would choose Clarence Kelley for this post of utmost importance. Never before in our history have the symbols of authority been so questioned and challenged. It is of the utmost importance to the future of American society that the Federal Bureau of Investigation be headed by a man of both great patriotism and unquestionable integrity. Clarence M. Kelley has both.

Clarence and Ruby Kelley with their son and daughter, Kent and Mary, became members of Country Club Christian Church almost 11 years ago shortly after he became Kansas City's Chief of Police. Knowing the immense demands

upon his time and the way in which emergencies constantly force changes in his schedule, we hoped that we might see him "from time to time." We soon discovered that we had real churchmen in Clarence and Ruby Kelley. Shortly thereafter, he was elected as a Deacon of Country Club Christian Church. Instead of offering the "press of responsibilities" to excuse himself from the regular humble tasks of the Deacon, he made it a point to be present when he was needed. Soon he was a regular in the balcony in our 9:00 o'clock service. Not many people know how consistently he has helped shepherd the balcony in our early service for many years past. Since we keep attendance records I am able to report that in a recent year he was recorded present 40 of 52 Sundays (and we may have missed a few at that). Thereafter, Clarence Kelley was elected to our Board of Elders, and it has been a moving experience to hear him offer beautiful and humble prayers at the Lord's table. He has never been too busy to take a Sunday afternoon to carry the Lord's Supper to those ill in hospitals and nursing homes. During our Golden Anniversary capital campaign of five years ago, he was one of our most ardent and faithful workers. Whatever the church has called upon him to do, he has done with unflinching devotion.

At the same time, it has been my privilege to come to know him as a devout Christian man. His activity in the church is no superficial thing. In the racial disturbances of the late 60's, I organized an inter-racial event called "Eyeball to Eyeball." This brought together blacks and whites from the churches of Western Missouri. Clarence Kelley spoke to this group. I shall never forget the depth of sincerity as he spoke of his earnest desire that all men of whatever color or creed should know full justice in Kansas City. In private and confidential conversations with him, I have come to know him as a man of profound sensitivity to human beings of all kinds, classes and colors.

My feelings are indeed mixed at this moment. It would seem unthinkable that his nomination would not be confirmed by the Senate, so I must assume that shortly we shall be losing him from our midst. This leaves me with a great personal sense of loss. At the same time I can only rejoice that he has been given a job as big as his capacity, and that our nation has been able to find a man upon whom it can place its utter confidence in a perilous hour. May God bless America, and may God bless the men such as Clarence Kelley who are called to her service.

LAWRENCE W. BASH.

Mr. HARDY. The other item I wanted to mention, this morning I heard questions about the support or the reaction to the report of our commission August 15, 1968, and that it was by and large in the community but there was a lot of criticism of it.

The Kansas City Star on August 19, 1968, published an article by Michael D. Miller, which was the result of a survey that Mr. Miller had made in the black community with regard to the reactions to the report of the commission; the same report which was referred to this morning in connection with failure to visit the bereaved members of the families of those who were killed in the riots, and the same report that contains the praise of Chief Kelley that I just quoted and among those—and I will put this in the record with the committee's permission—were statements such as from the Rev. A. L. Johnson, president of the Council for United Action—all of these are black leaders—who said that, "No, I don't think it's a whitewash. I think it pretty well told it like it was. It was a good report."

Also, Lee Bohannon, described as a young black man who emerged from the disorders last April as Lebo, a Patron Saint of many young Negroes. He was a leader of a march on city hall and has been quite clear in his objections to the status quo in Kansas City.

The CHAIRMAN. We must vote. We will recess until the call of the Chair. I have a vote in the Senate.

Also, will be placed in the record a telegram from Robert S. Boyd, former executive director, mayor's commission on civil disorder.

[The telegram from Robert S. Boyd follows:]

KANSAS CITY, Mo., *June 25, 1973.*

Senator JAMES EASTLAND,
Capitol Hill
Washington, D.C.,

As executive director of the Kansas City Mayor's Commission on Civil Disorder organized in 1968 to investigate and report on the riots which occurred in Kansas City following the death of Dr. Martin Luther King, Jr., I spent hundreds of hours over four months directing and assisting the work of the commission in investigating and analyzing the actions and leadership of Police Chief Clarence Kelley. In subsequent years, I have had additional opportunity to observe his capabilities. I deeply respect his honesty and competence and believe he is uniquely qualified to fulfill the duties of Director of the Federal Bureau of Investigation. I wholeheartedly endorse his appointment and urge his prompt confirmation. I have worked closely with Commission Chairman David Hardy and I endorse the views he will express to your committee Monday, June 25.

ROBERT S. BOYD.
Former Executive Director,
Mayor's Commission on Civil Disorder.

The CHAIRMAN. We will recess until the call of the Chair.

[Recess taken.]

The CHAIRMAN. Proceed, sir.

Mr. HARDY. As I was saying, the survey, which was reported on April 19 in the Star, mentioned one person that was interviewed and another was Lebo Bohannon, who was one of the young black men who became quite a hero with the youth in connection with this and he says, well, he summarized commission's report as, "OK." He said: "It puts things on people's minds. The recommendations aren't what is important. The thing that is important is that these guys—the members of the commission—are recognized as OK guys in town and people who didn't really know what was going on."

And then Herman Johnson, local chairman of the National Association for the Advancement of Colored People, praised the report.

And then Everett P. O'Neal—who testified here this morning—and Harold Holiday, who appeared as attorney for Bruce Watkins was quoted.

The CHAIRMAN. That was Mr. Holiday?

Mr. HARDY. Mr. Holiday was quoted—Mr. Holiday, as he is quoted in the paper that day, said: "To be effective, the report must have been composed by members that the general community considered to be reliable from up there and of substantial reputation."

He said that he was more pleased than displeased by the report.

He said: "I think the recommendations were about as bold as the political realities permit." Holiday noted.

And then John Wesson, chairman of the Congress of Racial Equality, also commented on the report and also Alvin Brooks, who was a very key figure in that he was for many years a black police officer and chairman of the local corps group and, at the time of our investigation, was the director of the city human relations department, and he expressed the fact that he believed he had first feared the commission's report might have been a whitewash but that he had gone into the matter in depth and had gone into what he described as the gut issues.

Finally, Lounneer Pemberton, executive secretary of the urban league, also was complimentary in the report.

All of those are explained in greater detail in the articles.

I would call this committee's attention to the fact that this was the result of a very intensive investigation in which we sought to look into causes and occurrences. Our report dealt with facts and recommendations. We did make a specific exception because of all of the charges, criticisms, leveled at the chief of police in that we did agree in advance that we were going to, in effect, try him personally. We had complete cooperation from him and some other agencies. Our trial of Chief Kelley and his competence is reflected in my statement, which I read.

Thank you.

The CHAIRMAN. Thank you, sir.

[The Kansas City Star article, dated Monday, August 19, 1968, follows:]

NEGRO LEADERS PLEASED BY REPORT

(By Michael D. Miller, a member of the Star's staff)

Ten Negro leaders who work intimately with the problems treated in the report of the Mayor's Commission on Civil Disorders today praised the candor and principles of the document.

They agreed, however, that the report would be simply an exercise in eloquence unless Kansas Citizens heeded its recommendations and began immediately to implement them.

"No, I don't think it's a whitewash," the Rev. A. L. Johnson, president of the Council for United Action, said. "I think it pretty well told it like it was. It was a good report."

Like most of the Negro leaders, Mr. Johnson said he thought the report could have gone further, but indicated he thought it was aimed in the correct direction.

He said the report would be without value, however, unless the implementing bodies of the city—the police board, the school board and the city council—began immediately to heed its recommendations.

His basic complaint with the findings of the report was the commission's praise of C. M. Kelley, chief of police. The C.U.A. long has complained and demonstrated against what it considers brutality and discrimination by the police department.

Lee Bohannon is a young black man who emerged from the disorders last April as Lebo, a patron saint of many young Negroes. He was a leader of a march on City hall and has been quite clear in his objections to the status quo in Kansas City.

Today he summarized the commission's report as "O. K."

He said he considered the shock effect on white citizens might be a more important fruit of the report than its specific recommendations.

"It puts things on people's minds," Bohannon said. "The recommendations aren't what is important. The thing that is important is these guys (the members of the commission) are recognized as O. K. guys in town and people who really didn't know what was going on."

He said he thought it essential that white Kansas Citizens absorb the mood of the report and realize they must adjust themselves in their thinking toward Negroes.

Herman Johnson, local chairman of the National Association for the Advancement of Colored People, praised the report, but noted its effect might be muted because it was a little hard to understand.

"I don't know if people will read into it what it is trying to say. Its service depends on the interpretation of the report," he said.

"It didn't take a positive position in some areas, but the evidence it presents does point up discrepancies."

He noted the confrontation at City hall. The report discussed in detail the use of targets by police, but did not commend or criticize the activities, Johnson said.

He said he considered the recommendations excellent and noted that civil right leaders had discussed many of them for years without much reception.

Julius Williams, area director of the N. A. A. C. P., was a bit more sharp in his comments than were other civil rights spokesmen.

He said he thought the report's value was hampered because it did not outline how to implement its recommendations.

"I feel it's all academic. It's a good piece of work and may reach history classes some day, but it doesn't say how to do things.

"We know the problem, but we need the answers—solutions to problems," Williams said. "I'm damned sick of commissions because I think the Negro has been dissected and bisected and studied and reviewed and nothing really comes out."

"It's another part of academic work put out by a commission that is not relevant because it didn't say where to get the money," Williams said.

He noted the report mentioned a shortage of Negro police officers but did not say how to recruit more black officers or how to get the money to pay them.

Everett P. O'Neal, vice-president of the Chamber of Commerce for urban employment, said he thought much would be gained by the community if its citizens executed what the commission recommended.

"It goes far into depths in an intelligent way and is done, in my opinion, to bring harmony rather than bring riots," he said.

Several of the black leaders said they thought it was important that the report came from respected members of the white "establishment" rather than from civil rights leaders. They said its origin could make complacent white citizens re-evaluate their actions, while a report from civil rights leaders might be dismissed as irrelevant.

"To be effective, the report must have been composed by members that the general community consider to be reliable, fair and of substantial reputation," said Harold Holiday, a lawyer and a leader of Freedom, Inc., a predominantly Negro political group.

He said he was more pleased than displeased by the report.

"I think the recommendations were about as bold as the political realities permit," Holiday noted.

John Wesson, chairman of the Congress of Racial Equality here, said a simple show of faith by the police department, the city council and the board of education was needed to make the report relevant.

"If not," Wesson said, "I think this report is just like Cinderella and other fairy tales. It illustrates a principle in an abstract manner and abstraction and reality are the twain that shall never meet.

"If they implement anything, it will do significant good."

He complimented the commission in telling the white community "if you want to help us (black men), then fight white racism in your own community."

Alvin Brooks has lived with Kansas City's racial situation for many years as a police officer, as chairman of local C.O.R.E. and now as the director of the city human relations department.

Brooks said the value of the report rests on two things.

"The citizens of Kansas City must see the need in making available the necessary funds to carry out the types of programs that the commission is setting forth and, secondly, they must commit themselves—all 600,000 of us—to understand and recognize that there are problems and begin to work toward all the areas mentioned."

He said he thought the study deserved to be considered as more than "just another report."

"The Kerner report was a national report, but the mayor's report reflects Kansas City and the citizens of Kansas City and their feelings. And we find now that Kansas City is very much the same, as far as the degree of racism, as other cities. We've got to make sure the city is saved and that needed funds are provided, work is done in all areas and that John Q. Public is made aware of the role he has to play in bringing about changes in attitude."

"I was afraid the commission would be just another blue ribbon commission that would not deal with the gut issues. But this (the report) is saying the gut cause of the frustration in the inner city dwellers is white racism which has become well institutionalized and part of an oppressive force keeping that segment of the community "in its place," Brooks continued.

"Unless we move away from this and move toward togetherness, we have not much chance to survive. Each summer gets long and unless we act, and act immediately, at the root causes of things that plague us as a people, as a city, we no longer will say the long, hot summer, but will have a long, hot year."

Lounneer Pemberton, executive secretary of the Urban League here, said he didn't consider the report to be a whitewash in any form. He thought it signifi-

cant that the report went into the white suburbs in seeking the causes of civil disorder.

Again, Pemberton noted the necessity of implementation of the report's recommendations.

Leon Jordan, a Missouri legislator and a leader of Freedom, Inc., said he still was digesting the report, but had found some "doubletalk" in it.

He noted, however, that the general report was important and its impact would be "tremendous" if actions were taken to implement it. He said a "financial choke" from the Legislature in Jefferson City was responsible for many problems in Kansas City.

A FIRST FOR POLICE

[By Charles Hammer, a member of the Star's staff]

Asked about incidents of the April riots for which police were criticized by the Mayor's commission, Chief C. M. Kelley said today police would act differently in some ways if faced again by the same challenge.

"We learned a great deal," Chief Kelley said. "Undoubtedly we would act differently. We are still committed to use of tear gas as a means of controlling crowds, when it does reach the point of riot.

"But at roll calls of officers we are calling upon them to demonstrate restraint."

Chief Kelley said the commission report seemed to him well written, well considered and fair. Asked whether he agreed that the department over-reacted at points during the trouble, the chief replied:

"Over-all, no. On occasion we may have reacted a little too quickly, but again, hindsight is better than foresight."

He said he does not now foresee taking any disciplinary action against officers in the two incidents which the commission singled out for criticism of police, involving use of tear gas at Lincoln high school and at Holy Name Catholic church.

"The commission's view was the hindsight view," he said. The best judgment of our officers might be different in the future, but at the time the officers had never met a situation like this.

"If the fault lies anywhere, it was in the whole system of quick reaction. These are two situations, however, in which we learned a great deal."

Chief Kelley was asked whether he agreed with the commission's conclusion that racism in the white community was part of the problem.

"I have noted there is racism," he said, "and a general concept of police as the champions of white people. But this department represents people as a whole, not white people or Negroes. We try to be champions of all the people, and of law enforcement."

Chief Kelley cited, as an example of police efforts to use restraint, the action of Patrolman Charles Bratten on Friday night. The officer persuaded several neighborhood residents to help in the arrest of a 24-year-old man who persistently refused to submit, and finally shot the man only after he ran at the officer as though to attack.

The chief said he was fully in sympathy with most of the commission's recommendations, particularly the hiring of 600 more police officers. He said he also would be pleased to double the number of storefront officers to improve relations between police and the Negro community.

He said a fund shortage has placed the department in the unhappy situation of having to cut the number of officers.

He said the department will continue to seek more Negro officers to improve its racial balance. The force is now 95 per cent white. Chief Kelley said he was to meet today with an official of Metropolitan Junior college to discuss creation of a police cadet force similar to one recommended by the mayor's commission.

Men at first not qualified as policemen would join the cadet force, working with other officers four hours each day and spending four hours in school. When they could qualify, they would join the force as regular officers. The plan is similar to many programs begun recently in private business.

Chief Kelley said all citizens must learn there has to be law and order in the streets.

"In my opinion, with a greater degree of consultation among us, I think we'll have that."

The CHAIRMAN. Senator Hruska?

Senator HRUSKA. I have no questions, Mr. Chairman. I think the witness has well outlined the work and characterized the workings of his committee. I have read parts of the report. I intend to read the balance of it in due time.

The CHAIRMAN. All right.

Dr. Wilkinson?

Mr. HARDY. What do I do with these, Mr. Chairman? The article I referred to and the church article?

The CHAIRMAN. It has been admitted into evidence.

Dr. Wilkinson?

Do you solemnly swear the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Dr. WILKINSON. I do.

The CHAIRMAN. Doctor, identify yourself for the record, please?

TESTIMONY OF CHARLES B. WILKINSON, EXECUTIVE DIRECTOR, GREATER KANSAS CITY MENTAL HEALTH FOUNDATION, AND ASSISTANT DEAN, UNIVERSITY OF MISSOURI, KANSAS CITY SCHOOL OF MEDICINE

Dr. WILKINSON. I am sorry, sir?

The CHAIRMAN. I said identify yourself for the record, please.

Dr. WILKINSON. Yes, I am Charles B. Wilkinson, present executive director of the Greater Kansas City Mental Health Foundation, and assistant dean of the——

The CHAIRMAN. Speak a little louder.

Dr. WILKINSON. Do you want me to repeat that?

Executive director of the Greater Kansas City Mental Health Foundation and assistant dean, University of Missouri, Kansas City School of Medicine.

The CHAIRMAN. Now, you may proceed, sir. Were you a member of the mayor's commission?

Dr. WILKINSON. Yes; I was.

The CHAIRMAN. What were your findings?

Dr. WILKINSON. My findings, I think, are embodied in the report presented by Mr. Hardy. This was one that we spent an extensive amount of time with, both in terms of a large series of interviews, as well as pulling this all together, so the actual report was as close as possible a unanimous agreement of the five members of that commission.

The CHAIRMAN. What do you think of Chief Kelley?

Dr. WILKINSON. Well, I have worked with Chief Kelley off and on in the police department since approximately 1964 and, well, the department, as a whole, since 1959, and most of the inroads in terms of programs, certainly related to mental health and human relations, have occurred, since I would say, 1967, and following it. And I have found him very cooperative at efforts at establishing or attempting to establish a number of programs that I think were useful to the community.

I felt him to be amenable and certainly accessible because I haven't always been entirely complimentary of the department and, usually, when I wasn't, I certainly let him know it. He was always open at

those particular times and other instances when I felt there was something that was highly laudable at the time, I also brought this to his attention.

I usually found him cooperative in his suggestions or in those instances when I was asked to do several things for the department.

The CHAIRMAN. Do you recommend him to us to be the Director of the FBI?

Dr. WILKINSON. Yes; I would.

Senator HRUSKA. I would like to ask you, Dr. Wilkinson, over how long a period did it take the Commission to gather its material, interview these witnesses, and develop material for its report?

Dr. WILKINSON. Oh, it seems to me we finished the active work of interviewing in August, after the March riots, so it was a period of possibly 4½ to 5 months.

Senator HRUSKA. Were you able to attend most of the meetings of the Commission?

Dr. WILKINSON. With the exception of maybe two or three when I was out of town.

Senator HRUSKA. You heard a lot of witnesses, didn't you?

Dr. WILKINSON. Yes; we did.

Senator HRUSKA. There was quite a bit of testimony about police brutality this morning by different witnesses. Were these instances of police brutality among the subjects on which you heard testimony in the Commission?

Dr. WILKINSON. Very definitely, yes.

Senator HRUSKA. And you heard witnesses who made charges and you heard answers to those charges, did you not?

Dr. WILKINSON. Yes; very definitely. Yes.

Senator HRUSKA. Were specific inquiries made in regard to the six deaths which occurred during the riots of April and following of 1968?

Dr. WILKINSON. Yes; the Commission did hear those; yes. The Commission did look into those.

Senator HRUSKA. Would you consider that the evidence that you compiled and the inquiries that you made were sufficient to write the kind of report that you did write and come to the conclusion that you did?

Dr. WILKINSON. I think so, yes.

Senator HRUSKA. Thank you. I think that is all, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. Davis?

Do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. DAVIS. I do.

The CHAIRMAN. Identify yourself for the record, please.

TESTIMONY OF ILUS W. DAVIS, FORMER MAYOR OF KANSAS CITY, LAW FIRM OF DIETRICH, DAVIS, BURRELL, DICUS & ROWLANDS

Mr. DAVIS. My name is Ilus W. Davis. I am the former mayor of Kansas City, Mo., having served from April 10, 1963, to April 10, 1971. I am an attorney in Kansas City, Mo., engaged in the practice of law in the firm of Dietrich, Davis, Burrell, Dicus & Rowlands. Since

March 8, 1973, I have been president of the Board of Police Commissioners of Kansas City, Mo. The Police Department of Kansas City, Mo., is governed by a board of five persons, four of whom are appointed by the Governor of the State of Missouri, and the fifth being the mayor of Kansas City, Mo. The chief of police of Kansas City, Mo., is appointed by the Board of Police Commissioners and serves at its pleasure. The police department operates under the law of the State of Missouri.

Clarence Kelley was appointed as chief of police of Kansas City, Mo., in August of 1961, and has served in that post since that date. During that time he has served under three Governors of the State of Missouri, two of whom were members of the Democratic Party and the current Governor who is a member of the Republican Party. During the tenure of his service there have been three presidents of the Board of Police Commissioners.

I appear here today in support of the President's nomination of Clarence Kelley for the post of Director of the Federal Bureau of Investigation. I have known Mr. Kelley since 1935 when we were in college together at the University of Kansas. I have had the opportunity to know him as a classmate, as a friend, as chief of police for 8 years while I was mayor and as a member of the same church where we are members.

In my opinion, Mr. Kelley has a number of qualities which would make him an effective Director of the Federal Bureau of Investigation.

Clarence Kelley is a natural leader. He stands out as a leader in almost any group that gathers. He has been an outstanding leader of the police department of Kansas City, Mo., since his appointment in 1961. His leadership has been exhibited in a number of different ways. He has secured the respect for the department over the entire metropolitan area. He has succeeded in securing the services of the various law enforcement agencies of the metropolitan area which covers five counties in two States in establishing a major case squad. This group has had notable success in solving a number of serious crimes that have been committed in various locations in the metropolitan area.

He has shown leadership in building up the efficiency and the morale of the Kansas City Police Department so that today the department operates efficiently and effectively. He has the respect and affection of the members of the board, his own staff, the many patrolmen in the department and the general public. He has exhibited leadership by bringing into the department new ideas, new means of organization and new equipment. I think that his capacity for leadership would be of great service to him if he were to be confirmed by the Senate for the Directorship of the FBI.

Mr. Kelley has shown a great capacity in the field of administration. Since his arrival in Kansas City he has exhibited talent in bringing the administration of the police department up to a modern standard. He was insistent in bringing the records of the department into a top condition and has instituted a computer program which has assisted every patrolman on the force in the performance of his duties. In addition, he has shown talent in carefully establishing a good staff operation in the department. He has given substantial and well defined authority to various divisions of the department. He has encouraged and succeeded in involving all of the members of the department in

the progressive day-to-day operations of the department and inspired them to participate actively in seeking the best police methods available to make law enforcement more effective in Kansas City.

He has demonstrated many times his ability to accept the policies of the police board and to operate within the limitations that are placed upon him by the law. He has resisted political pressure that has come from time to time in the operation of his Department and has demonstrated his understanding and desire to operate within the limitations of the law. As the law has changed during the past several years with changes imposed by the Supreme Court decisions, he has meticulously reeducated the members of the department in following the law and carefully imposed upon the department the restraints which the changes in the law have placed on the operations of the police.

Clarence Kelley has demonstrated over the period of a lifetime his personal integrity which would serve him well in this highly responsible post for which he has been nominated. He has lived modestly and there has been no hint of any problems in his personal or professional life which would reflect on his integrity. He has reared and educated his family and participated actively in his church where he is an elder.

He has demonstrated a compassionate awareness of the changes that have taken place in his country in civil rights and racial relations. He has increased the number of minority policemen substantially over the period of the last several years. He has worked closely with the board in establishing an office of citizens complaints which serves as a means for investigating complaints which might be made by citizens about the police department. Today there are 100 black officers in the department, most of whom have been recruited during Chief Kelley's tenure as a result of a special recruiting effort which was made by him to secure qualified minority patrolmen within the department.

He has, of course, the benefit of a lifetime of service in law enforcement having been a retired FBI agent before he came to Kansas City. He has the background of over 20 years of service in that department and over 11 years of service as chief of police in Kansas City. With his technical and professional knowledge he would bring to the FBI a well rounded background of service in this very important field.

I heartily endorse the nomination of Clarence Kelley as Director of the FBI and know that if the Senate sees fit to confirm him, he will serve in his post with effectiveness and with great credit to himself and his country.

The CHAIRMAN. That was a fine statement.

Senator HRUSKA?

Senator HRUSKA. Yes, one or two questions, Mr. Chairman.

How long has this board of police commisisoners been in existence and functioning?

Mr. DAVIS. The board of police commissioners was established by the State law about 1940 and, as I remember, Senator, the custom has grown up for new Governors who come in, for the Governor to appoint a new board although there is a provision for staggered terms of the members.

The board, of which I am president at this time, was appointed by the new Governor of the State of Missouri and we took office early in March of this year.

Senator HRUSKA. First, as mayor, and then as a member of that board, you have been in touch with the police department and their affairs quite closely since 1963; is that right?

Mr. DAVIS. Yes, that is right.

Senator HRUSKA. How often does this board meet?

Mr. DAVIS. We meet regularly twice a month, but are on call for any member of the board actually or the chief and we have been having informal meetings, sometimes once or twice a week, in addition to the regular meetings.

Senator HRUSKA. Does it appoint the chief of police?

Mr. DAVIS. It appoints the chief of police and the chief serves at the pleasure of the board.

Senator HRUSKA. In general, what are its scope of activities and duties?

Mr. DAVIS. In general, we establish the policies of the department and the police and the chief of police and he, as the chief executive officer, so to speak, of the department, carries out the policies of the board and he is the man who executes the policies.

Senator HRUSKA. So that when matters come to the chief of police; for example, this morning, we were told that public hearings were requested in regard to some aspects of the police department's activities and, on one occasion, the police chief, the chief of police, said that he would refer that matter to the Board of Police Commissioners. Now, is that sometimes done?

Mr. DAVIS. That is done quite frequently and that is the proper function for him to perform in that case because the board has the legal responsibility of holding public hearings on matters of complaints.

Senator HRUSKA. Have you had public hearings from time to time?

Mr. DAVIS. Yes, the board has public hearings and we have also established a procedure for the hearing of complaints before they come to the Board and then under our State law any member of the public or any member of the police department who is dissatisfied with the decision has the right to appeal to the board and have a public hearing before the board.

Senator HRUSKA. So that you are not dependent as a board solely upon the recommendation of the chief of police as to whether there should be a public hearing or not?

Mr. DAVIS. No, absolutely not. We have the final say-so and it is our final responsibility.

Senator HRUSKA. Do you handle personnel matters also?

Mr. DAVIS. Yes, any personnel matters, the chief has the first responsibility in these personnel matters but in the discharge of policemen, the policeman has the right to appeal to the board and then we have to conduct a public hearing or if the policeman receives punishment from the chief, which he is authorized to inflict under the law, he also has an appeal to the board. We have just recently conducted one of those hearings.

Senator HRUSKA. Some concern has been expressed by members of this committee as to intelligence-gathering activity and whether the chief of police and his intelligence unit could be noseey about individuals and obtain a lot of information on them, just for the purpose of general intelligence, although maybe the odds might be about 1 to 1,000

that those items of information might be helpful. Some members on the committee say that should not be done and that intelligence efforts should be directed only in those cases where there is reasonable cause or high probability that that information might be called for or would be useful.

Now, did considerations of that kind ever reach the attention of your police commission during your tenure on it?

MR. DAVIS. Yes, sir; and I think that Chief Kelley has shown great capacity for working with the board and executing the policies that are, in part, made by the board or made by the board after consultation with him. For that reason, it would seem to me that he would have a very high awareness of some of the problems that have been expressed at this hearing about the fine balances that must be maintained between the duties of the police to carry out their functions and the rights of the citizens.

THE CHAIRMAN. Who established the system by which you gathered the information of a general nature; is it the board or is it the chief?

MR. DAVIS. Generally in our case, it has been worked out after a discussion with the board and the policy has been made by the board and they take responsibility for it.

SENATOR HRUSKA. You referred in your testimony to Chief Kelley's ability to accept policies of the board and operate within the limitations that are placed upon him by the law. That presupposes that the board has the power to delineate the various activities by way of general policy; is that correct?

MR. DAVIS. That is correct.

SENATOR HRUSKA. And you felt that he was able to follow the policies laid down by the board and observe them?

MR. DAVIS. I think that very definitely, and he has demonstrated that, I think, by being able to serve under three separate boards with different people on them, which I think exhibits an awareness of his relationship to the board and the confidence that they have in him.

SENATOR HRUSKA. Well, the policies are in response to the contemporary feeling, in the community as to what can and must be done in a certain area by way of policemen?

MR. DAVIS. That is correct.

SENATOR HRUSKA. And that is a little better than getting orders from some bureaucrat in Washington; isn't it?

MR. DAVIS. You said that, Senator. I didn't.

SENATOR HRUSKA. Kansas City's board of police commissioners is not unique, is it? Other cities, Los Angeles, for example, have similar setups.

MR. DAVIS. Some have boards and I think only in St. Louis, Kansas City, and Baltimore are the boards appointed by the Governor.

SENATOR HRUSKA. I know such a system is highly thought of elsewhere.

As a concept, do you think it is sound?

MR. DAVIS. Yes, I think it has some merit in having a civilian board to consult with the chief. I think someone has said that war is too important to be left to the generals and I suspect that you might also say that police and law enforcement is too important to be left entirely up to the police.

Senator HRUSKA. Well, it is a compromise as to the matter of political pressures; isn't it, with two elected officials on it and three members of high caliber representing the general public. And that seems to be an effort to try to strike a balance between the intervention of political pressure, if such is indicated, and the assertion by the community of the concept that, after all, principles and policies, in general, should control situations of this kind; isn't that true? Do you find that it works that way?

Mr. DAVIS. I think, in general, it has worked that way. The only criticism that has come is whether the board should be appointed by the mayor who is elected locally or appointed by the Governor who is appointed by the people of the State rather than the people of the area.

Senator HRUSKA. Does the Governor attend these meetings?

Mr. DAVIS. The Governor has never attended one to my knowledge.

Senator HRUSKA. Does he send a deputy or delegate?

Mr. DAVIS. No, under the law, he appoints the four members; the fifth being the mayor, who is elected locally, and they have the full authority.

Senator HRUSKA. I see.

Well, thank you very much. Your statement has been very helpful.

The CHAIRMAN. Senator Burdick? Any questions?

Senator BURDICK. Mr. Chairman, I have just gone over the witness' statement. I will read it more fully later on. At this time, there will be no questions.

The CHAIRMAN. Senator Mathias has submitted certain questions in writing to Mr. Kelley to which Mr. Kelley has agreed to furnish answers in writing. These questions and answers will be printed as a part of this hearing.

QUESTIONS BY SENATOR MATHIAS IN WRITING TO CLARENCE M. KELLEY

I

(1) I have always had a high regard for the FBI and for your predecessors as Director or Acting Director of this agency. I think all Americans are aware of the tremendous contribution to our Nation that the FBI and its personnel have made. I hope that you, if you become Director, will communicate my feelings of esteem, which I believe are shared by this entire committee, to the members of the FBI.

I have been concerned for some time that we in the Congress may be expecting the FBI to do too much. Particularly, I have been concerned that we may be asking it to do our job, or the President's job, or the court's job, in too many cases. The operation of the NCIC system, about which I will ask questions later, may be an example of the failure of Congress to establish clear guidelines.

For reasons similar to this, I believe it may be imperative for the good of the country and of individual citizens for the Congress, and particularly this committee, to buckle down to the difficult but important task of defining by statute the purposes, role, powers, responsibilities, authority, permissible activities, accountability, and independence of the FBI. I think we need to make clear to whom the Director should report under certain circumstances. I think we should

make clear the Bureau's relationship to the political process. I think we need to make clear what the FBI is not supposed to do—as well as what it is supposed to do—so that you can concentrate your full energies and resources to the tasks which are properly before you.

I wonder if you would agree with me on these points, and I would appreciate your expanding on your own thoughts in this area.

In particular, do you believe it would be proper and useful for the Congress to provide a full, carefully sculpted, statutory basis for the FBI and its Director? If so would you be prepared to cooperate in the drafting of such a statute? Could you give to this committee a draft of what you believe such a statute should contain in the next month?

(2) If faced with a situation where you could not make your views known directly to the President, or if faced with a situation where you were in major disagreement with a policy under which you were expected to operate, would you resign?

(3) Attached is a copy of an article which appeared in the May, 1973 Journal of the American Bar Association which is submitted for the record, to be printed at the conclusion of these questions. The article cites one alleged misuse of crime statistics by the FBI. Please comment on the article, and the allegations contained therein. Would you agree that the reliability of crime statistics is vitally important if such statistics are to be a viable tool for measuring progress in the fight against crime? What steps has the agency taken and do you plan to take to insure the greatest possible degree of accuracy in FBI statistics? What steps have been or will be taken to obtain accurate data from FBI sources the FBI uses to obtain such statistics?

(4) Please elaborate on the meaning of the phrase "in contemplation of prosecution" which you used during your testimony in discussing the permissible purpose of domestic intelligence-gathering operations. Is this the equivalent of a probable-cause standard or is it something short of that?

(5) During his confirmation hearings, now Attorney General Richardson made reference to two views expressed by J. Edgar Hoover about the operations of the FBI:

That there is a need to maintain a separation between intelligence gathering and evaluation of that intelligence.

That there is a need for limitation of FBI authority to specific crimes in order that the agency not become a national police force.

Do you agree? What are the implications of these views for the operations of the agency? For legislation governing the operations of the FBI which Congress may adapt?

(6) Would you oppose wire-tapping a news reporter to discover his sources of news? What if the Attorney General or the President requested you to tap a newsmen to discover his sources? Would you refuse? What are the standards you would apply in reaching a decision? The laws governing this process?

(7) Do you believe that law enforcement officers should have access to bank records of citizens? Under what circumstances and for what purposes? Should they be required to obtain a warrant first?

I am impressed that in your experience with the Kansas City Police Department, you have dealt extensively with the NCIC and related systems.

I gather that you have found these systems generally useful, but I would assume that you have thoughts on how they might be made more useful as tools for attaining the goals with which we all agree—law with justice. In reviewing this data system, I have been particularly concerned that we insure the safeguarding of the basic rights of privacy of every citizen and the basic rights protected by our Constitution and the various State constitutions.

(1) Do you agree that these computer systems are of tremendous importance to the safety and welfare of all Americans?

(2) Do you agree that there is a possibility of abuse in the use of these systems?

(3) Do you agree that such abuse, if it occurred, would endanger the public support and confidence necessary for the best functioning of these systems?

(4) If so, do you feel that Congress, in exercising its constitutional responsibilities, must concern itself with insuring that these systems are operating according to standards which make the possibility of abuse minimal, while insuring that the systems will serve the law enforcement needs of the Nation?

(5) If this is the case, do you believe that it would be useful to have a wisely drawn statute which would set forth the purposes, scope, and general operating guidelines for the NCIC and similar systems? Do you feel that S. 2546 (92d Congress) is adequate? If the Congress or this committee should determine that there is a need for such statutory guidelines, would you cooperate fully in preparing such legislation? Would it be possible for you to submit to this committee your suggestions in some detail, and recommendations of what such a statute should contain? If so, would you do so within the month so that the committee could immediately consider such legislation?

(6) Do you affirm Mr. Gray's policy that the FBI will support civil and criminal penalties for the unauthorized dissemination of a criminal history record?

(7) How many individual files are now contained in the NCIC? How many of these are summary files? How many are complete files? How do you distinguish between the two categories? What would be your personal estimate as to the rate of growth in the number of files that would be contained in the NCIC over the next year, 5 years, 10 years? Do your answers represent any changes from the responses to these questions supplied by Mr. Gray during his hearings? If so please identify them.

(8) How many of the files above are criminal history files of particular individuals? How many of these are summary files? How many are complete files? What is your personal estimate as to the number of such files the NCIC will contain or have access to in 1 year, 5 years, 10 years? Do your answers represent any changes from the responses to these questions supplied by Mr. Gray during his hearings? If so, please identify them.

(9) In answering questions 7 and 8 above, do these figures include files stored in State systems? If not, what is your estimate of the number of files stored in those systems?

(10) The FBI role in the operation of NCIC is often referred to as a "switching" operation. To what does this have reference? Give some examples of the use of the system that will demonstrate its maximum capabilities in terms of time, geography, and information. Are there any limits on the ability of a local unit to reach any other part of the network? Is all information available to such units? To policemen on the street? Without such limitations, is it proper to think of the NCIC system as just those records contained in the Federal computer?

(11) What volume of traffic by way of inquiries for criminal histories does NCIC have now on an average monthly basis? How many such inquiries on an average monthly basis have been received from Los Angeles, San Francisco, Houston, Chicago, New York, and Atlanta? How many requests has Kansas City made in the last year which obtained criminal histories from NCIC in Washington, from New York, from Atlanta, from Chicago, from Houston, from San Francisco, and from Los Angeles?

(12) Do the NCIC Operating Manual and the document entitled "National Crime Information Center, Computerized Criminal History Program, Background, Concept and Policy, as Approved by NCIC Advisory Policy Board," dated September 20, 1972, represent the complete published guidelines for operation of the NCIC at this time? If not, what other guidelines exist and in what form are they to be found? Please submit them if they exist. Have any of these guidelines been amended within the last year?

(13) What justifications exist for making NCIC information available to Federal agencies which are not law enforcement agencies? Should only those agencies which now have direct access (under pt. III of the "Policy Paper" of Sept. 20, 1972) to criminal history information be allowed to receive it? If other Federal agencies are to continue to receive criminal history information, what safeguards do you plan to institute for the use and security of such information? Should arrest records be distributed without disposition?

(14) In Mr. Gray's response to my written questions at the time of his confirmation hearings, he indicated that computer criminal history records were governed by Public Law 92-184 which prohibits their dissemination for use in connection with licensing or local or State employment, other than with a criminal justice agency. He also indicated that fingerprint records are disseminated in treatment of these two types of files? Do they not contain essentially the same type of information? Is there a legal ground for such a distinction? A policy ground? Shouldn't there be one policy?

(15) Will you develop model State regulations with proper safeguards for the use of State computer systems? Do you have authority to require adoption of such regulations? Are such safeguards negotiable items in the negotiation of contracts with States for tie-in to the NCIC system? Will you prepare a compilation of current State regulations and provide them to the committee? Please attach copies of these now on file to the answers submitted to these questions. Will you conduct a survey of these State regulations and safeguards and evaluate them against minimum requirements you believe should be required? Will you then provide this committee with a copy of that

survey and evaluation? How do you monitor State systems for compliance with contracts and regulations?

(16) Mr. Gray responded to a question by stating that the right of an individual to inspect his NCIC files is patterned on the current procedure for inspection of fingerprint files. This in turn requires a party to go through the original arresting agency. Why should a citizen not be allowed to inquire of the system at any point the content of his own file at any point in the network? What limitations, if any should be placed on this right and with what justification? Should notice be given to every person of the existence of his file by appropriate means? What is the procedure if a person objects to the inclusion of some or all of the material in his file: Does he have a right to petition for removal? A right to appeal from an adverse determination?

(17) How is purging of NCIC files of erroneous, obsolete, or improper data accomplished? How often is it done? What are the criteria for removal of information? Does economy of storage play a role in the addition of information to a file? In its deletion? What assumptions does the purging operation make about the passage of time? About other factors? Is constant updating required of States using the system? Should purging be subject to the various policies of each State?

(18) Should the FBI continue to have authority over the NCIC system? Should the NCIC system be placed under the authority of an independent agency? Under authority established by the Congress and run by the States? Under LEAA? What are the considerations you believe should govern this determination?

(19) How many FBI employees are presently involved in the operation (including supervisory and planning personnel) of the NCIC system?

(20) What planning capabilities does the FBI have for considering the implications of future developments in computer technology? How many persons are presently assigned to such planning?

(21) What is the current membership of the NCIC Advisory Policy Board? What is the current membership of the permanent Committee in the Security and Confidentiality? Do you believe that these committees should have broad representation? How many members of these committees are currently police officers? Other criminal justice areas? From other walks of life?

(22) Do you intend to seek more temporary authority as a result of the *Menard* decision to distribute arrest records? Will you submit formal legislation for permanent authority?

[Article from the May 1973 Journal of the American Bar Association]

F.B.I.—STATISTICS—A DETECTIVE STORY

(By Hans Zeisel)

The F.B.I. for years has blamed a "lenient" judiciary for part of the increase in crime, and it even had its own convenient statistics to prove it. The "Careers in Crime" section of the annual crime reports showed that as many as 92 per cent of persons "acquitted or dismissed" through the federal judicial system were rearrested. But now the statistics have been shown to be a giant yet persistently maintained hoax.

For many years, until the investigations that led to this article began, a section entitled "Careers in Crime" appeared in the uniform crime reports published annually by the Federal Bureau of Investigation. The section always culminated in an intriguing graph, of which the following, from the 1969 uniform crime reports, is an example:

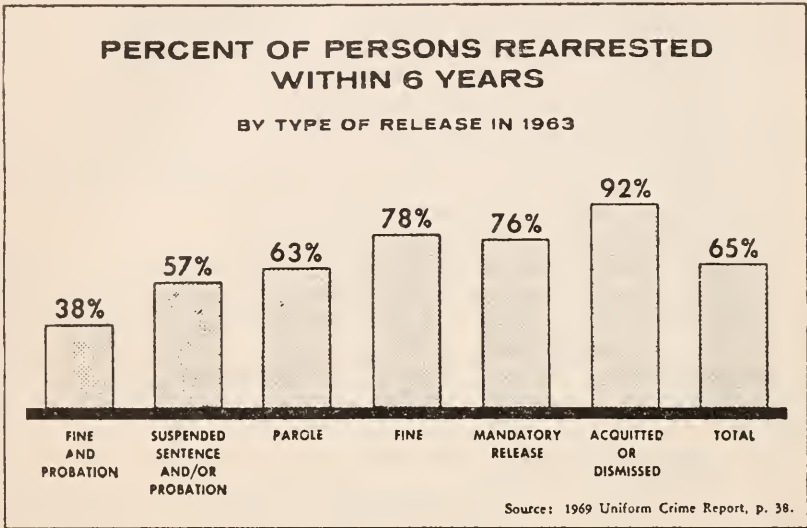


Chart 19

FBI CHART

The numbers on top of each bar grew slightly from year to year because, as more time elapsed since the year of release, more of these people would be arrested. But the over-all shape of the graph remained remarkably stable. One bar stuck out especially in this remarkable piece of F.B.I. statistics, like a sore thumb, reminding everybody that measured by the number of crimes committed since their release, the "acquitted or dismissed" persons were the worst group of criminals allowed to go free. This prize statistic now turns out to have been a hoax.

It all began with the thoroughly laudable idea that it would be interesting to learn more about the aftermath of federal law enforcement, so as to gain a better insight into its long-range effectiveness. Accordingly, the F.B.I. decided to follow up the criminal aftermath of all persons released to the community in a certain year. The year was 1963.

The federal system releases persons to the community either from its prisons or its courts. A prisoner is released mandatorily after having served his sentence or through parole before his time is up. A defendant in the courts is released unless convicted and sentenced to prison. He will be released in spite of being found guilty if he is but sentenced to a fine or if he is given probation or a suspended sentence. Finally, the courts release defendants whose cases are dismissed or who are acquitted after trial. The follow-up study of the F.B.I. counted the proportion of persons who in the interval between the release year and the reporting year had been rearrested for a new crime.

F.B.I. HAS DOUBLE ROLE

The terminology in this study reflected the peculiar double role of the F.B.I. as custodian of crime statistics and as principal law enforcement agency. The report called all persons released from the system "offenders" even if their cases had been dismissed by the court or if they had been acquitted, and it called everybody rearrested a "repeater," although he may not have been convicted of a crime even once.

But since the arrest yardstick, whatever its obvious shortcomings, was applied to all released persons without distinction, arguably it could serve as a crude index for comparing the actual criminality of those coming from the various release channels. Thus the interesting point of this release statistic, and the one always prominently mentioned in the accompanying F.B.I. text, was the peak rearrest rate among those the courts let go free. This result served to buttress the perennial F.B.I. complaint over the softness of the courts. As far back as 1966, the uniform crime report summarily labelled as "Leniency" (page 32) all dispositions involving probation, suspended sentence, parole, or conditional release. And in what must have been J. Edgar Hoover's last congressional testimony in April of 1972, he returned to the theme: "I think the leniency some courts have shown is responsible for some of our difficulties." And there it was, the 92 per cent rearrest rate of those the system let go free, powerfully supporting the F.B.I.'s contention. But the figure was not exactly easy to explain, and altogether perhaps a bit too powerful.

The first man to suspect it was an Australian scholar, Paul Ward, senior lecturer in criminal statistics at the University of Sydney. He was struck by the fact that the slight annual additions to the group under study were overwhelmingly persons who had been rearrested in the meantime. In a paper he called "Careers in Crime: The F.B.I. Story," published in 1970 in the *Journal of Research in Crime and Delinquency*, Professor Ward ventured the suspicion that the F.B.I. liked the rearrest rates in the control group by adding only people who had been rearrested and disregarding those who had not been rearrested. When the F.B.I. denied this, Mr. Ward admitted error but added that doubts continued to exist in his mind. I came across the data and the controversy in the course of my work for the President's Commission on Federal Statistics, which had asked me to study the statistical problems of crime and law enforcement. At that time I could only pay passing attention to this piece of F.B.I. statistics and remarked in my section of the commission's report, "The Future of Law Enforcement Statistics," "An interesting result if true. . . . But since it is a highly self-serving statistic from the F.B.I.'s point of view, on a controversial point, its presentation and analysis merit somewhat more care."

ANOTHER MINOR INCONSISTENCY

Later on, I found time to look more closely, and it was first another minor inconsistency in the year-to-year growth that caught my eye. There was also a second, if less tangible, ground for my search. I have long learned to be wary of near-perfect scores in the realm of human conduct, where the unending multiplicity of causes tends toward imperfection. Any 92 per cent figure, so close to the 100 per cent perfection level, merits suspicion.

It occurred to me that another branch of the federal government, the Administrative Office of the United States Courts, should have an accurate count of the released persons who formed the basis of the F.B.I. statistics. And so it had, and when the number of persons released in 1963 from the federal system was compared with the F.B.I. data base, a curious picture, shown in Table 1, emerged.

TABLE 1

Release channel	FBI data base	Count by the administrative office of the U.S. courts	FBI base as percent of actual count
From the courts:			
Fine only.....	1,790	2,797	64
Probations, including fine and probation.....	8,393	12,082	70
Dismissed and acquitted.....	1,190	4,974	24
From the prisons:			
Mandatory release.....	3,145	3,441	91
Parole.....	4,049	5,289	77
Total released.....	18,567	28,583	65

Note: The FBI data base is from the uniform crime reports for 1969, the year the base reached its maximum. The count by the administrative office is the mean of figures for fiscal years 1963 and 1964.

For the first time, it became apparent that the F.B.I. base did not include all persons released in 1963. The F.B.I. had collected data for only a fraction of all persons released by each channel. For those mandatorily released from prison

after having served their sentence, the fraction was large—91 per cent. But for the crucial group whose cases had ended in dismissal or acquittal, the fraction was very small: the F.B.I. had lost 76 per cent of all cases in this group.

Yet in all these years of publishing the uniform crime reports, the F.B.I. never as much as hinted at the existence of a potential sampling problem that could distort the results of these statistics.

F.B.I. DOCUMENTS FAULTY DATA BASE

When confronted with the discrepancy, the F.B.I. at first was not responsive, but later it not only admitted but also documented that its data base indeed was faulty. The documentation came in a table that revealed the F.B.I. base as a severely biased sample. It contained too many persons in the crime groups for which rearrest rates were high, and too few of those for which the rearrest rates were low. For instance, of the three crimes with the high rearrest rate of 81 per cent, the F.B.I. group had almost three times the proportion of cases it ought to have had; and of the three crimes with the low rearrest rate of 47 per cent, it had only one fourteenth of the amount it should have had, as shown by Table 2.

TABLE 2
[In percent]

	Average arrest rate for persons dismissed or acquitted on these charges	Share of these crimes	
		Among all acquitted and dismissed	In the FBI group
Originally charged with—			
Auto theft, burglary, assault.....	81	10.6	27.6
Fraud, liquor law violations, embezzlement.....	47	27.6	1.0

Correcting for this error alone would have brought down the rearrest rate for those "dismissed or acquitted" from 92 per cent to 78 per cent. But it is by no means certain that this was the only error the F.B.I. committed. As a matter of fact, it is most unlikely that this accidentally documented anomaly was the only error. Once it is established that the cases used by the F.B.I. were but a small fraction of the total "dismissed or acquitted" group, and once it is established that this fraction is anything but a probability sample of the total group, the credibility of all statistics based on this fraction is destroyed.

This discovery raised the other urgent and last question. What was the cause of this elementary sampling error committed by the F.B.I.? The search led to a cause so gross and so simple that there could be no possible excuse for committing the error in the first place, and even less for not correcting it throughout these many years of misuse. It turned out that the F.B.I.'s data were not based on all persons "dismissed or acquitted" or on a representative sample of these persons. Rather the F.B.I. had concentrated primarily on its own cases, that is, on the cases its agents had brought into the system and about which they wanted to learn whether they had "won" them or "lost." The cases that came into the system through other agencies—the Bureau of Narcotics, the Secret Service, the Treasury, the Postal Inspector, the Customs Office, and the United States attorneys' offices—received less or no attention. Not to disclose this fact and deal with its consequences, probably not even to be aware of it, is unpardonable.

On August 29, 1972, the F.B.I. released the uniform crime reports for 1971. As usual it contained the "Careers in Crime" section, albeit on a changed but again doubtful data basis. All the traditional statistics are there, all, that is, but one: the graph and table comparing rearrest rates by channel of release are missing.

Yet the story of the F.B.I.'s wagging finger is but a paradigm. With all, that 92 per cent figure has probably done little harm in the real world. Yet, the persistent failure of the F.B.I. to investigate its statistical prize, in spite of many warnings, rounds out the picture. F.B.I. statistics emerge by no means as villain, merely as an operation with low professional standards, lacking sensitivity or even curiosity, especially when it comes to figures that please. In the last analysis, it is the unnatural administrative combination of police work and statistics that is to blame.

The accurate measure of crime is becoming an ever more important indicator of the country's social health or sickness. It is high time that this difficult and important task be removed from the hands of an organization with vested interests in the results of the statistics it gathers and be entrusted to a group of specialists whose career interests are in objectivity and accuracy. The creation of a Bureau of Criminal Statistics within the Department of Justice would help to accomplish this. The removal of this responsibility from the F.B.I. should in no way hamper its law enforcement activities. On the contrary, all its energies could then be devoted to what has always been its primary and would then become its sole task.

SUPPLEMENTAL ANSWERS TO QUESTIONS BY SENATOR MATHIAS IN WRITING TO
CLARENCE M. KELLEY

PART I

Where possible I will be responsive to the questions of Senator Mathias. Those questions which require data or information not now available to me I would respectfully ask to defer until I have had an opportunity to review the necessary information.

1. I am of the opinion that a statutory basis for the FBI and the Director would be proper, but I am also strongly of the opinion that it should not be overly restrictive and detailed so as to hamper the FBI in the exercise of its law enforcement functions. I would certainly cooperate in drafting such a statute; however, the submission of a draft proposal and the timing thereof are matters that are within the discretion of the Attorney General. Moreover, such a legislative proposal would be subject to all of the normal clearance procedures.

2. Yes.

3. I am not completely familiar with the study to which Mr. Zeisel refers. However, Mr. Zeisel may be trying to compare data which is not directly applicable to the FBI study. I would have to inquire further into this matter to furnish a more responsive answer.

I certainly agree that crime statistics need to be reliable. The Uniform Crime Reporting Program is a voluntary, cooperative effort of law enforcement to develop national crime statistics. It is administrated by the FBI, and the Committee on Uniform Crime Records of the International Association of Chiefs of Police is an advisory body of the program. I am not aware of all of the details; however, I do know the FBI for several years has been encouraging states to develop mandatory state crime reporting programs. I believe this is a step in the right direction to improve the overall quality of crime statistics.

4. The phrase "in contemplation of prosecution" was used to suggest that the proper activating purpose of domestic intelligence gathering is the discovery of evidence of a federal crime within the jurisdiction of the FBI. Domestic intelligence gathering should never be conducted capriciously. On the other hand, it would unduly hamper the FBI or any law enforcement agency if probable cause were to be the standard to be met before even initiating an investigation of crime.

5. I agree that the FBI should not draw legal conclusions about the evidence it produces. Whether such evidence justifies prosecution, for example, is a question best left to United States Attorneys or one of the legal divisions of the Department of Justice. I agree that the FBI should not become a national police force. It should confine its activities to the investigation of specific crimes assigned to it by Congress; moreover, the FBI should not assume jurisdiction over local crimes. This is where the spectre of a national police force looms largest in the minds of the public.

6. I would oppose wiretapping a newsman for the purpose of discovering his news sources unless that activity seemed clearly warranted under the circumstances because of some reasonable apprehension that the national security is endangered. In that situation, the President has an obligation to do what is necessary to protect the national security even if it entails eavesdropping on a newsman.

7. Yes, I agree with the language of Congress (Section 101 of Public Law 91-508) "... that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings." I think that law enforcement is greatly aided by law enforcement agency access to these bank records.

I would oppose a requirement for obtaining a warrant before access, on grounds that customers of financial institutions have no proprietary interest in

the records kept by the institutions and that there are no constitutional inhibitions which prohibit reasonable inspections of these financial records by the Government. Such records are the property of the financial institutions maintaining them. I am of course aware of the sensitivity of this area and feel that law enforcement agencies must be very careful in their dealing with financial institutions.

PART II

1. Yes.

2. Yes.

3. Abuses for which there are no sanctions would endanger public support and confidence. Procedures should be developed to recognize and correct abuses quickly.

4. Yes.

5. I do believe that it would be useful to have such a wisely drawn statute. Concerning S. 2546 (92nd Cong.), I am not familiar with the bill's specifics and am therefore not in a position to discuss its adequacy. If Congress determines that legislation is desirable, I would be willing to cooperate fully in its preparation. I must point out, however, that any policy determinations would be subject to the approval of the Attorney General. I am informed that the Department of Justice, including the FBI, is currently in the process of formulating legislative recommendations. I am unable to say, however, whether any legislation could be submitted within the month. Again, the proposal would be subject to the usual clearance procedure.

6. Yes.

7 and 8. As of May 1, 1973, there were 4,192,342 active records in NCIC with the breakdown showing 129,609 wanted person, 811,764 vehicle, 252,384 license plate, 706,828 article, 594,279 gun, 1,393,097 securities, 6,852 boat, and 297,529 criminal history records. The files on wanted persons and stolen property are index-type records pointing to case files of the agencies which hold the warrants or theft reports. The computerized criminal history records represent 297,529 individuals. All records in the Computerized Criminal History File are complete records at this time. A computer-generated summary may be extracted from the complete record upon request. A separate summary record is not maintained in file. I do not have the information available to estimate the rate of growth of the number of files in NCIC in the future. My answers do not represent any changes from Mr. Gray's responses except, of course, as to the file sizes in NCIC which have changed since his testimony.

9. My answers in 7 and 8 do not include files stored in state systems and I have no basis for estimating the number of files stored in those systems.

10. The "switching" operation relates to the concept of message switching. Currently the NCIC system only allows activity from a remote terminal to the NCIC computerized files with no cross traffic. Message switching as applied to the NCIC system would allow criminal justice agencies to communicate with each other, with their messages being switched by the NCIC computer. The extent to which such switching could be used would depend upon the procedures and discipline established for such a system. The NCIC system would be one facet of such a communications network and it would not be proper to attribute records of other criminal justice agencies on the network to the NCIC system.

I am not unaware of the desirability of inclusion of information regarding disposition of arrests. The improved communications capability that switching offers would enhance NCIC's ability to obtain information on dispositions.

11. I do not have this information available, except as to Kansas City. During calendar year 1972, the Kansas City Police Department requested for its own use 635 summaries and 138 "rap sheets." It also obtained a total of 2207 summaries and 357 "rap sheets" for all users on its system, which include other law enforcement agencies in the Kansas City, Missouri, area.

12. To my knowledge the NCIC Operating Manual and the document entitled "National Crime Information Center, Computerized Criminal History Program, Background, Concept, and Policy, as Approved by NCIC Advisory Policy Board," dated September 20, 1972, represent the complete published guidelines for operation of the NCIC at this time.

There have been no changes in the guidelines appearing in the above references since they were last furnished to the Committee during Mr. Gray's hearings.

13. I am informed that the issues raised by this question, *i.e.*, the extent to which federal agencies of a non-law enforcement character should have access to NCIC, *etc.*, are currently being discussed among interested government agencies, in-

cluding the FBI, with a view toward formulating policy recommendations. For this reason, I believe that it would be inappropriate for me to treat these issues until such time as I have had the opportunity to review those recommendations.

14. The dissemination of so-called "fingerprint records" is, in fact, governed by the provisions contained in Title II of Public Law 92-544, substantively identical to those of Section 902 of Public Law 92-184. (Public Law 92-184 was the Supplemental Appropriations Act of 1972 for the fiscal year ending June 30, 1972; Public Law 92-544 makes appropriations for fiscal year 1973.) The provisions permit the exchange of such records with officials of state and local governments for purposes of employment and licensing if authorized by state statute and approved by the Attorney General. Thus, there is no distinction with respect to the dissemination of fingerprint records.

15. I believe it would be presumptuous and beyond FBI authority to require state regulations for the use of state computer systems other than with respect to the use of data obtained from NCIC. Safeguards established by the NCIC Advisory Policy Board are not negotiable items and states must agree in writing to these safeguards before access to the Computerized Criminal History File is granted. I do not believe that safeguards for state criminal justice information systems unrelated to the Computerized Criminal History File should be subject to the control of the NCIC Advisory Policy Board, NCIC or the FBI. As to preparing a compilation of current state regulations, I do not know at this time what this entails or the extent to which it is possible to collect authoritative sets of regulations. I do not believe I would have the authority to require states to furnish me with their state regulations and safeguards for their own systems. The safeguards required for the Computerized Criminal History File are stringent and specific and must be adopted by the states for participation in this Program. Representatives of the FBI/NCIC staff visit with state systems for the purpose of consulting with them and reviewing their compliance with systems requirements.

16. The requirement that a citizen inquire regarding the content of his NCIC file through the original arresting agency rather than at some other point in the NCIC network is based on the fact that the original arresting agency is responsible for the NCIC file and for insuring that the citizen is positively matched with his own criminal history record. As to limitations that should be placed on the citizen's right of inquiry, he should have a reasonable basis to support his need, excluding mere curiosity, otherwise such inquiries could constitute an unmanageable administrative burden. As to whether notice should be given to every person of the existence of his file, it is observed that such file is based on an arrest in connection with which the citizen was fingerprinted and he therefore should be aware of the existence of the file. An individual may request expungement of his record through the arresting agency which entered it. If denied expungement, he may petition the courts and, if unsuccessful in his petition, he has the right of appeal.

17. There is no automatic purging of NCIC criminal history files at present. Removal of information is, however, presently effected upon the request of the originating agency. To my knowledge, economy of storage does not play an appreciable role in either adding or deleting information from the system. States are strongly encouraged to submit new and corrected information to NCIC as it becomes available. With respect to other inquiries concerning purging and updating of files, I am not in a position to respond, as these issues are being actively discussed among the appropriate agencies with a view toward establishing standards.

18. I believe the FBI should continue in its present role with respect to NCIC. I see no need for an independent agency. The idea of operation by the states was rejected some time ago in favor of the current approach, which I consider sounder. Because there is a need for law enforcement expertise and permanency in the agency responsible for NCIC, I think the FBI is best suited for the role. Additionally, the FBI still carries an excellent reputation for integrity and competence among other law enforcement agencies on the state and local levels.

19. I do not have this information available.

20. I do not have this information available.

21. I submit to the Committee a paper listing NCIC Advisory Policy Board members. (The list submitted by Chief Kelley appears below.) The term of the Committee on Security and Confidentiality has expired and the Chairman of the NCIC Advisory Policy Board is currently reconstituting this Committee. I believe the Board and the Committee should have broad representation from the criminal

justice community since this is a criminal justice information system. The NCIC Advisory Policy Board members who were elected by the system users are members of law enforcement agencies. I subscribe to the position of the Policy Board that individuals from other segments of the criminal justice community also sit as members of the Board.

22. I am not sufficiently familiar with the *Menard* decision you refer to. I recognize however, the sensitivity involved in the dissemination of arrest records and will carefully study the issue as soon as possible after I am confirmed. As I have mentioned earlier, any legislative proposal would be submitted by the Attorney General after he receives my recommendations.

LIST OF NCIC ADVISORY POLICY BOARD MEMBERS

NORTHEASTERN REGION

Colonel D. B. Kelly, Department of Law and Public Safety, Division of State Police, Box 68, West Trenton, New Jersey 08625.

Mr. William E. Kirwan, Superintendent, New York State Police, Public Security Building 22, State Campus, Albany, New York 12226.

Major Albert F. Kwiatek, Director, Bureau of Technical Services, Pennsylvania State Police, Post Office Box 2771, Harrisburg, Pennsylvania 17120.

Colonel Walter E. Stone, Superintendent, Rhode Island State Police Headquarters, Post Office Box 185, North Scituate, Rhode Island 02857.

Mr. John R. West, Deputy Superintendent, Police Department, 154 Berkley Street, Boston, Massachusetts 02116.

NORTH CENTRAL REGION

Colonel Robert M. Chiaramonte, Superintendent, Ohio State Highway Patrol, Columbus, Ohio 43205.

Mr. Clarence M. Kelley, Chief of Police, Kansas City, Missouri 64106.

Mr. Robert K. Konkle, Superintendent, Indiana State Police, Indiana State Office Building, 100 North Senate Avenue, Indianapolis, Indiana 46204.

Colonel John R. Plants, Director, Department of State Police, 714 South Harrison Road, East Lansing, Michigan 48823.

SOUTHERN REGION

Colonel R. L. Bonar, Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, West Virginia 25309.

Captain J. H. Dowling, Communications Bureau, Police Department, 128 Adams Avenue, Memphis, Tennessee 38103.

Dr. Howard M. Livingston, Director, Police Information Network, Department of Justice, 111 East North Street, Raleigh, North Carolina 27602.

Colonel Ray Pope, Director, Department of Public Safety, Post Office Box 1456, Atlanta, Georgia 30301.

Honorable William L. Reed, Commissioner, Florida Department of Law Enforcement, Post Office Box 1489, Tallahassee, Florida 32302.

WESTERN REGION

Mr. L. Clark Hand, Superintendent, Idaho State Police, Post Office Box 34, Boise, Idaho 83707.

Mr. O. J. Hawkins, Assistant Director, Identification and Information Branch, California Department of Justice, Post Office Box 608, Sacramento, California 95803.

Colonel James J. Hegarty, Director, Arizona Department of Public Safety, Post Office Box 6638, Phoenix, Arizona 85005.

Mr. George P. Tielsch, Chief of Police, Seattle, Washington 98104.

The CHAIRMAN. We will adjourn now and meet at 10:30 in the morning, in executive session.

(Whereupon, at 4:10 p.m., the hearing was adjourned to reconvene at 10:30 a.m., on Tuesday, June 26, 1973.)

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